

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

WILLIAM B. TUTTLE, JR., RAYMOND J. : VOLUME III  
JOHNSON, GEORGE H. KUCHEN, JOHN E. :  
STRAIT, RICHARD SIROIS, WILLIAM :  
MENKINS and JAMES A. TAYLOR :  
vs. :  
DANIEL MARVIN, TRINE DAY, LLC : 2:04 CV 948

Trial in the above-captioned matter held on Wednesday,  
January 25, 2007, commencing at 9:30 a.m., before the  
Hon. David C. Norton, in the United States Courthouse,  
Courtroom II, 81 Meeting St., Charleston, South Carolina.

APPEARANCES:

BOBBY G. DEAVER, ESQUIRE, 3760 Bald Mountain Rd.,  
West Jefferson, NC, appeared for plaintiffs.

BENJAMIN W. DEAVER, ESQUIRE, 705 Princess St.,  
Wilmington, NC, appeared for plaintiffs.

CHRIS OGIBA, ESQUIRE, 205 King St., Charleston,  
SC, appeared for defendants.

BARRY A. BACHRACH, ESQUIRE, 311 Main St.,  
Worcester, MA, appeared for defendants.

REPORTED BY DEBRA L. POTOCKI, RMR, RDR, CRR  
Official Court Reporter for the U.S. District Court  
P.O. Box 835  
Charleston, SC 29402  
843/723-2208

## I N D E X

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1 (Jury not present.)

2 THE COURT: I've listened to the dog farm tape. As  
3 we say down here, Mr. Bachrach, this dog don't hunt.

4 MR. BACHRACH: The reason we wanted to put it in is  
5 it is mentioned in the book, it goes to -- again, they're  
6 challenging plaintiffs' credibility, and it goes to the  
7 credibility. And just as other issues have come up about  
8 Colonel Maggie and other issues, and that's why we wanted to  
9 put that in, to support the fact that he does mention in the  
10 book and it's --

11 THE COURT: Why don't you ask Mr. Sirois, did he give  
12 him a tape that supports the dog allegation in the book, and  
13 when he answers yes, we don't have to listen to this thing.

14 MR. BACHRACH: Excuse me?

15 THE COURT: Just ask him, I'm sure he'll admit that  
16 he did give him a tape. I mean, this is ten minutes about his  
17 education as -- or ten or 15 minutes about his education as a  
18 medic and going and shooting dogs and curing them and then  
19 killing them.

20 MR. BACHRACH: Okay.

21 THE COURT: Okay? I don't see any purpose of -- I  
22 mean, you know, may be some dog lovers on the jury.

23 MR. BACHRACH: Okay, Your Honor.

24 THE COURT: So I mean, if it's necessary or something  
25 like that for cross-examination purposes or something like

1 that, maybe you could get it in, but I don't see, you know, it  
2 seems like it's not something at issue, number one; number  
3 two, it's confusing; number three, it's not particularly  
4 appealing to dog lovers, and number four, there's nothing that  
5 Mr. Sirois did, it's what the Army did. Right?

6 MR. BACHRACH: But it is part of his training and it  
7 was mentioned in the book, and I'll just reserve my objection.

8 THE COURT: Okay.

9 MR. BEN DEEVER: Your Honor, also in the book I think  
10 it just -- it's just one blip, just quotations, dog lab, and  
11 that's the only mention of it in the book. So I appreciate  
12 your ruling, sir.

13 THE COURT: Okay. Anything else before we bring the  
14 jury in? We'll deal with the jury instructions later on.

15 MR. OGIBA: Okay.

16 THE COURT: Okay?

17 MR. COLLINS: Not from us.

18 THE COURT: Anything else from the defendants?

19 MR. OGIBA: No, Your Honor.

20 THE COURT: So we'll make this tape, whatever the  
21 next defendants' exhibit, for identification only, so we  
22 can -- And what would that be?

23 THE CLERK: That will be Defendants' 39 for I.D.

24 THE COURT: Defendants' 39 for identification only is  
25 the tape we just talked about where Mr. Bachrach doesn't like

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1 my ruling.

2 MR. OGIBA: Thank you, Your Honor.

3 (Jury present.)

4 THE COURT: Welcome back, ladies and gentlemen, we'll  
5 continue with the trial of this case. Call your next witness,  
6 Mr. Deaver, Mr. Collins?

7 MR. BEN DEAVER: Yes, sir, Your Honor, we'd like to  
8 call Mr. Sirois, please.

9 THE COURT: All right.

10 THE CLERK: State your name for the record.

11 A. Richard Sirois.

12 RICHARD SIROIS, a witness called by the plaintiffs, first  
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BEN DEAVER:

16 Q. Good morning, Mr. Sirois.

17 A. Good morning, sir.

18 Q. Would you state your full name for the record, please?

19 A. Richard Sirois.

20 Q. And where do you live, sir?

21 A. I live in California.

22 Q. And are you employed out there?

23 A. Yes.

24 Q. Where are you employed, sir?

25 A. I work for the Post Office. I'm a custodian.

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1 Q. And --

2 A. That's a nice word for a janitor.

3 Q. How long have you been working for the Post Office?

4 A. Retired in '89, and I had to get on the list and take all  
5 the tests and everything. About '91. '91.

6 Q. When you say you retired in '99, from --

7 A. From the military.

8 Q. And what was your first job at the Post Office?

9 A. I was a clerk.

10 Q. Okay.

11 A. Well, no, actually I was a casual carrier, and then I  
12 worked myself up to take the test and go through all the  
13 rigmarole that the Government has, and then I got hired on as  
14 a -- a PTF, what they call a part-time -- part-time. And it  
15 was a clerk, and then I made regular, and then I switched,  
16 what they call switching crafts, and I switched over to the  
17 maintenance craft.

18 Q. Any particular reason?

19 A. Yeah, as a clerk, you need a lot of seniority to get  
20 Saturdays and Sundays off, and I saw that the janitors were  
21 getting Saturdays and Sundays off, and I said, I'm going to be  
22 a custodian.

23 Q. All right. Where were you born, sir?

24 A. I was born in Lawrence, Massachusetts.

25 Q. Did you go to school up there?

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1 A. Yes, sir, born and raised there. Stayed there for 18  
2 years.

3 Q. And what made you leave?

4 A. Joined the Army.

5 Q. Okay. And so when did you join the Army?

6 A. I joined the Army in December 1958.

7 Q. Did you go through basic training?

8 A. Yes, I went to basic training at Fort Dix, New Jersey.

9 Then I went to advanced infantry training at Fort Dix, New  
10 Jersey. And then I went to Germany, they shipped me off to  
11 Germany and I went to Germany. And when I got to Germany they  
12 wanted to change my MOS, my military occupational skill, and  
13 they said you're not going to be in infantry no more, you're  
14 going to be an artillery man. And I ended up in a  
15 headquarters, and headquarters battery of 8th Division  
16 Artillery in Germany for two years.

17 Q. And then what did you do, sir?

18 A. Then I got stationed at Fort Benning, Georgia. And I was  
19 supposed to go to the infantry regiment there training for  
20 OCS, and they said -- they asked me if I would like to be a  
21 bus driver, and I said you mean I don't have to go out in the  
22 field and all that? And they said no, if you want to be a bus  
23 driver, we'll train you. And I said, I'll take it. Because I  
24 was living on post, you know, in the quadrangle, nice  
25 quarters, I knew I didn't have to go out in the field or

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1 anything. So I took it. And I ended up making spec four.

2 And then I got caught in the Berlin crisis. I was supposed to  
3 go out in December of 1961, but they came around, they said  
4 everybody in the military, because of Berlin, you're still in  
5 the military. So I ended up three or four more months in the  
6 military, and then I got discharged.

7 Q. All right. Did you ever go back in?

8 A. Yes. I went back in. I stayed out about eight months and  
9 went back in again in December of 1962. But this time --

10 Q. You didn't go back in because your job paid 75 cents an  
11 hour, did you?

12 A. No, but it only paid \$2.25 cents an hour, I think, at that  
13 time.

14 Q. Okay. So you went back in.

15 A. Yes.

16 Q. And tell us about that, sir.

17 A. I always wanted to be a paratrooper, but I didn't have the  
18 opportunity to do it the first time, so I decided I was going  
19 to become a paratrooper. And I took the test to get into  
20 Special Forces. And at that time it was a big battery test  
21 you had to take to get in. And I made a high enough score and  
22 I got selected to go. And then after jump school, because I  
23 was prior service, I didn't have to go to basic training or  
24 anything, I just went to jump school, and then I got assigned  
25 to Special Forces. And I was in Special Forces at Smoke Bomb



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1 Hill. And because I had a fairly high IQ, I was selected to  
2 go to the medical school that they have.

3 Q. And you did?

4 A. And I did.

5 Q. All right. So your SF training is as a medic?

6 A. As a medic.

7 Q. All right. After you completed your jump school, your  
8 training as a medic, where did you -- did you go anywhere  
9 after that?

10 A. I had to finish up and do all the SF Special Forces other  
11 stuff, you know, the training and everything. And then I had  
12 to -- Well, first of all, I had to graduate from that medical  
13 school. Then after the medical school I had to go to OJT and  
14 work with doctors in the hospitals and the emergency rooms and  
15 stuff like that. And then after that we went to a phase  
16 called dog lab. And we went there for that training, and I  
17 graduated from that training, and then I got selected to go to  
18 Spanish language school, and I went to Spanish language  
19 school. Then I got shipped off to Panama in 1964.

20 Q. And then what happened?

21 A. I stayed in Panama, was training, and went on mobile  
22 training teams to Central and South America, and I got orders  
23 to go to Vietnam.

24 Q. When did you go to Vietnam?

25 A. I went to Vietnam in February of 1966.

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1 Q. What was your assignment there, sir? When you first  
2 arrived in Vietnam, where did you --

3 A. Well, first of all, we went to a place that was like a  
4 replacement camp right outside of Tan Son Nhut air base. And  
5 then Special Forces came and picked us up and we went to Camp  
6 Goodman, which was like an administrative building right there  
7 in Saigon. From Saigon, I went to Nha Trang, which is the big  
8 headquarters of Special Forces. And then from there they said  
9 you're going down to Fourth Corps. So I had to wait, and I  
10 got a plane or a helicopter, I can't remember, back to Can  
11 Tho, which was the big C Team. And from Can Tho they sent me  
12 to Muc Wa, which was the B Team, and then from Muc Wa I went  
13 to a little FOB that was assigned to Kinh Quan Tho, the place  
14 was called Akbak. (phonetic) And I stayed there for one  
15 month. And then after that, I came over to 424.

16 Q. What was your duty at 424?

17 A. I was a senior medic.

18 Q. All right. And when you say 424, that's An Phu?

19 A. Yes, at An Phu.

20 Q. Have you had an opportunity to read the book?

21 A. Yes.

22 Q. Okay. Is your name mentioned anywhere in this book, sir?

23 A. That book is loaded with my name in there. And that's the  
24 reason that I'm up here, is because my name is in that book so  
25 many times, but the problem is, none of the stuff that

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1 happened to me in that book is true. It's all lies.

2 Q. Okay. Let's get into some of those lies, if we can. Do  
3 you have a copy of the book with you?

4 A. Yes, I do.

5 Q. All right. Can you reference a page where you might be  
6 listed in it?

7 A. Well, I think if you go to the index, you'll see my name  
8 in -- you'll see my name in there under Sirois, you'll see it,  
9 Specialist Five, a/k/a Bac-Si, I'm at page 143, I'm on page  
10 171, I'm on page 183, 186, 187, 230, I'm all over the place in  
11 that book.

12 Q. I'm sorry, I don't know if I asked you, when did you  
13 arrive in An Phu?

14 A. In An Phu I arrived, I would say about the middle of  
15 March. I'm not for sure exactly the date, because I know I  
16 got in Vietnam in February, and I spent almost about one full  
17 month at Akbak, and then, you know, the two weeks of waiting  
18 and stuff like that, so I would say around March.

19 Q. March of which year, sir?

20 A. 1966.

21 Q. Are you familiar with this book?

22 A. Yes, I'm very familiar with this book.

23 Q. All right. And you've been here listening to testimony  
24 that's been presented the past couple days?

25 A. Yes.

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1 Q. All right. Have you heard any of the testimony that  
2 indicates that A-424, while you were assigned to it, was  
3 firing rounds into Cambodia?

4 A. Some of the people said that they did.

5 Q. Okay. Were you a member of the team at the time when they  
6 were firing --

7 A. Yes.

8 Q. Did you ever fire into Cambodia?

9 A. No.

10 Q. Do you know if any of the members of the team --

11 A. No. We -- when I was at An Phu, we had a 4.2 mortar.  
12 That thing was fired, yes, but only for illumination to help.  
13 Sometimes we got a call from the FOBs and they said hey, we  
14 got a little action going on over here, can you fire some  
15 illuminating rounds? That was the -- that was it.

16 Q. Now, was the FOB in Vietnam or was it in Cambodia?

17 A. The FOB -- we had several FOBs, but the one that -- the  
18 one that I was -- we were mostly concerned with was the one  
19 that was next to Khanh Bin. It was a place called Phu Hiep.

20 Q. Was it in Cambodia or was it in Vietnam?

21 A. It was in Vietnam.

22 Q. All right. So when y'all lit up the sky with these  
23 illuminations, were you illuminating Vietnam?

24 A. Oh, yeah. I don't even think that the 4.2 rocket -- I  
25 mean the 4.2 mortar, would even go into Cambodia. Because I

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1 think we were too far away.

2 Q. So the range wouldn't reach into Cambodia?

3 A. I don't think so. Because I don't know, I don't know a  
4 lot about mortars except the basic things, you know. But --

5 Q. Because you're a medic?

6 A. I'm a medic.

7 Q. Okay. Would you mind turning in the book to page 144,  
8 please. Are you familiar with pages 144 and 145?

9 A. Yes, it almost made me sick when I read it.

10 Q. All right. Just to summarize it, what does it read?

11 A. It reads that I was with Didion, and we was on a canal,  
12 and we were being attacked by 40 VC, and I had my M-16 and  
13 they were firing at me with a machine gun, and I was in there  
14 behind the -- in a little trench. And I was shooting all  
15 these Viet Cong coming at me, and they were shooting the  
16 machine guns, and I killed a whole bunch of them, and I was  
17 scared, and I put my -- my M-16 round inside the thing all  
18 different. It's all pure baloney.

19 The problem is that I sent him a tape before, and he asked  
20 me for a tape a long time before this book was written, and he  
21 said to me -- he said to me, would you tell me some incidents  
22 that happened to you? And I told him one incident that was  
23 very hairy to me, that I was caught in an ambush and went --  
24 and the lieutenant that was with me, later on in the afternoon  
25 went out again, and he got killed. And we both were involved

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1 in an ambush, and I was lucky to be alive. And the whole  
2 story of that incident happened in another camp. It never  
3 happened in this book. It never happened here. That's why  
4 I'm here and I'm mad.

5 Q. All right. So where did that incident take place?

6 A. Bachu. (phonetic)

7 Q. Were you assigned to Bachu after you were assigned to An  
8 Phu?

9 A. Yes.

10 Q. After --

11 A. All of the incidents in here, he got me looking at a  
12 woman's vagina. That's completely false, that she had been  
13 raped. A Vietnamese woman would never -- they were so vain,  
14 they wouldn't even take a bath with -- with their -- nude, in  
15 the river. They would put their -- have their clothes on and  
16 take a bath. That's not true. The baby -- the baby --

17 Q. Let's hold on, let's hold on. We'll get to all that. All  
18 right? But the incidents on 144 and 145 where you put your  
19 magazine upside down because you were so scared, did not  
20 happen in An Phu?

21 A. No. No, it did not happen at An Phu. It never did happen  
22 at An Phu.

23 Q. But you said a little while ago you provided Mr. Marvin  
24 with some tapes.

25 A. Oh, yes.

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1 Q. Now, the tape that you provided, did it say that this  
2 happened in Bachu?

3 A. I can't remember that. You know, he told me -- When I  
4 first met Mr. Marvin -- I mean not met him, but the first time  
5 I had ever any contact with him since I left Vietnam, was  
6 either in December of 1987 or January of '88. And I was still  
7 in the Army, I was a command sergeant major as -- in at  
8 medical battalion at Fort Devens, Massachusetts, and he called  
9 me up. My wife answered the phone, she says it's somebody by  
10 the name of Marvin. I went, you mean Dan Marvin?

11 And I picked up the phone, I was really happy to hear from  
12 him, it was the first time I've ever met anybody from the team  
13 that was with me in Vietnam. The first time. And he says  
14 hey, how are you doing, this and that. And then he told me  
15 about John Strait a little bit over the phone, we talked, he  
16 said Jim Taylor is still around, I asked about John Eleam. He  
17 says, Can you give me some tapes? I'm going to be writing a  
18 novel or a book. And I says, Oh, you are? And he said, Yeah,  
19 I'm going to be writing a book called the Bassac Bastards.  
20 And I said, Oh, all right. Oh, sure, I'll give you some  
21 tapes.

22 And he sent me a letter and he put all these little  
23 incidents down, if I remember correctly, and he said, I want  
24 you to do all these other things. I want you to send me some  
25 tapes and tape what you know and all these incidents and all

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1 that. So I provided him with the tapes. And then he called  
2 me back up again and he talked to me. And then he called me  
3 back up again and he talked to me about some different other  
4 things. And I provided, I think, another tape about my past  
5 experiences. And then he said, We're going to meet at the  
6 reunion in 1988, the Special Forces reunion.

7 Well, I did meet him there, and I got turned off by him  
8 right away.

9 Q. What do you mean by turned off?

10 A. Well, he wanted us -- he kind of led us around, and he was  
11 showing us all these newspaper clips about him in New York and  
12 what he was doing. He even -- we even went to a house one  
13 night, and I had my wife with me and other people, and he --  
14 and he played a tape. And it was a tape about something about  
15 a --

16 MR. BACHRACH: Objection, Your Honor. I'm not sure  
17 what the tape is going to be about, and it may be something  
18 that's irrelevant.

19 MR. BEN DEEVER: Your Honor, I don't know what the  
20 tape's about either, he's just telling about his experiences  
21 and he has direct knowledge of.

22 THE COURT: Go ahead. Overruled. Go ahead.

23 A. Go ahead?

24 Q. Yes, sir, please.

25 A. Okay. Well, he had some kind of a VHS tape, and it was



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1 him being interviewed by some reporter or something. And he  
2 was talking about something that had to do with -- I don't  
3 know if it was something -- a Navy guy or something, and it  
4 was about an assassination. And I went, What? My wife looked  
5 at me and she goes, Honey, that guy's nuts. No, that's  
6 exactly -- and I was turned off right from that time.

7 I came back after that reunion -- And also, I want to  
8 mention something else, too, because it's in here. It's in --

9 MR. BACHRACH: Your Honor, may I move to strike on  
10 the grounds that it's irrelevant to the matters here?

11 THE COURT: Overruled. Ask another question.

12 BY MR. BEN DEAVER:

13 Q. All right. You kind of threw me off. You got on a little  
14 run there. All right. Back to An Phu.

15 A. Okay.

16 Q. I believe we were on page 144 and 145. I think we kind of  
17 covered that, that you're saying that the incident where it  
18 mentions you on 144 or 145, just did not take place. Correct?

19 A. It took place, but not at An Phu.

20 Q. All right. How about we go to page 171, if you wouldn't  
21 mind, please.

22 A. 171.

23 Q. Do you know if your name's mentioned in there?

24 A. It's mentioned all over the place. 171. Something about  
25 I wanted you to know -- to run some medical patrols?

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1 Q. Yes?

2 A. Huh?

3 Q. I think it has something to do with possibly delivering  
4 some babies?

5 A. Where is that now?

6 Q. On page 171?

7 A. Yeah. "Tell him to go grin and bear it, John," blah blah.

8 "I wanted you to know they're running some good medical  
9 patrols from the FOB down to the village of Phu Hoa where the  
10 Chams live and doing it with their CIDG medic. Bac-si is  
11 doing a good job training those Striker medics."

12 THE COURT: Mr. Sirois, slow. She has to take this  
13 down.

14 BY MR. BEN DEEVER:

15 Q. Did you find it in there?

16 A. About a baby?

17 Q. Yeah, just take your time with it.

18 A. "That's great, Bac-si, we need all the kind of help we can  
19 get. How did the medical patrol go?

20 "Real good, Dai-uy. We went to Vinh Hoi hamlet, a little  
21 more than halfway between here and the PF outpost at Nhon Hoi.  
22 We must have treated 100 villagers. It was pretty much  
23 routine. I checked teeth too as I looked into their ailments  
24 and decided we'd take another patrol up there in a couple of  
25 weeks and do some pulling. Co Lau is going back up with our

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1 new nurse later this week to teach the children how to brush  
2 and take care of their teeth. Of course their mothers there  
3 are with them so they learn from watching and listening as our  
4 nurses teach the children. There are no further hurt feelings  
5 or embarrassments that way. Sergeant Hung will arrange for a  
6 security escort."

7 Q. Let's stop right there. Is that part of what you did over  
8 in An Phu, was do medical patrols?

9 A. Yes.

10 Q. Teach children how to brush their teeth?

11 A. Not really. That was -- we did that, yeah, but my mostly  
12 thing was -- like I was the doctor of that whole place,  
13 because they didn't have any doctors. They would have to go  
14 way down the river to Chau Doc. So I -- my nurses and I, we  
15 pulled teeth, we cleaned sores, we taught them how to, you  
16 know, use the basic stuff. Because they're still living --  
17 they were still living in those little villages like you would  
18 live 2000 years ago. Wooden wheels on carts and oxes and  
19 straw -- straw hamlets with straw roofs, pigs living in the  
20 same house as the people, and chickens, dirt floors, you know,  
21 so they've got a lot of sicknesses. Mostly worms. So I did a  
22 lot of that. That's what I did.

23 Q. All right. Did you ever fire your weapon while you were  
24 over there?

25 A. No.

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1 Q. Did you ever see anybody else, any Americans, fire their  
2 weapons?

3 A. Nope.

4 Q. Now, as being the medic, the chief medic, like you said,  
5 the doctor over there --

6 A. Yeah.

7 Q. -- if somebody was wounded, would they bring them to you?

8 A. Yes.

9 Q. All right. Can you tell us how many Americans you treated  
10 for wounds while in An Phu?

11 A. None.

12 Q. How about anyone else?

13 A. None.

14 Q. All right. Have you had an opportunity to look at any of  
15 the reports that are in the back of the book, I believe  
16 they're called the psy op reports?

17 A. You mean the intel?

18 Q. Correct.

19 A. Are you talking about the illustrious Appendix 14 there?

20 Q. Yes, sir.

21 A. Oh, okay, yes. I had an opportunity to look at that.

22 Q. All right. Could you turn to Appendix 14?

23 A. Yes.

24 Q. All right. And can you tell me what it is, please?

25 A. Well, I didn't type it up, I'm sure of that. And I don't

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1 know who would type that up. But what's really really mind  
2 boggling --

3 Q. Can you just tell me what that is; what does that depict?

4 A. It says it's combat statistics Camp Dan-Nam, An Phu  
5 District, Chau Doc Province, South Vietnam, 1 January through  
6 31 July 1966.

7 Q. All right. Now where it says down there any friendly  
8 KIAs, can you tell me what that means?

9 A. Friendly, friendly KIA means in January there was 14 --  
10 four friendlies, friendly troops, which would be our CIDG.  
11 And in February there was nine, and March there was one.

12 Q. Let's start there in March, because I believe that's when  
13 you arrived, wasn't it?

14 A. Yes.

15 Q. Okay. Do you remember that wounded friendly?

16 A. No.

17 Q. All right. So you're saying that you never treated that  
18 person?

19 A. I never treated anybody that was wounded in combat in An  
20 Phu.

21 Q. How about in April?

22 A. April is blank, looks like it's blank.

23 Q. All right. How about May?

24 A. Absolutely not. 46 people? If I would have treated 46  
25 people, I mean, excuse me, friendly -- wounded in action?

## RICHARD SIROIS - DIRECT EXAMINATION

1 Q. Well, let's start up at -- yes, let's stick with the  
2 Americans and the friendlies. Friendly KIA, how many?

3 A. Friendly KIA, you got to be kidding me, May, 46, and  
4 wounded, 122. My dispensary would have had all kinds of  
5 wounded people in there, and I never even seen one.

6 Q. All right. So the wounded, what, how many?

7 A. Now it says there was plus two USSF wounded in action in  
8 May. And I was there --

9 Q. Can you tell us what USSF is?

10 A. United States Special Forces.

11 Q. All right. Were you there in May?

12 A. Yes.

13 Q. All right. Did you treat two United States Special Forces  
14 soldiers?

15 A. No.

16 Q. Did you treat --

17 A. I would have had -- if I would have known -- if I'm a  
18 medic, and I'm the only medic there, if somebody gets wounded,  
19 I would have had to put in a battery casualty card, I would  
20 have had to initiate all kinds of paperwork, I would have -- I  
21 mean, to have two people wounded on your team -- No one in our  
22 team at An Phu ever received a Purple Heart. They would have  
23 all -- they would have had to have a Purple Heart. I would  
24 have to put them in for -- assigned a casualty card. That  
25 didn't happen.

## RICHARD SIROIS - DIRECT EXAMINATION

1 Q. All right. Is it mentioned in the book that you put  
2 people in for Purple Hearts?

3 A. I don't think so.

4 Q. All right. So if there were this many Americans that were  
5 wounded, you would have been obligated to put them in for a  
6 Purple Heart?

7 A. Yes.

8 Q. But you never did?

9 A. I never did.

10 Q. Do you remember any mention about Mr. Marvin requesting  
11 you to increase the amount of supplies that you had on hand?

12 A. No.

13 Q. In the book, does it mention anything about you increasing  
14 the amount of supplies?

15 A. Yes.

16 Q. All right. Do you remember where it is in the book?

17 A. I think I have that on my notes over here, but I'm not  
18 sure. Yeah. Page 143.

19 Q. All right.

20 A. I mean 183.

21 Q. And I think it says in the book you were asked to increase  
22 your medical supplies by 25 percent.

23 A. Yes.

24 Q. All right. Why, according to the book, was he asking you  
25 to increase your medical supplies by 25 percent?

## RICHARD SIROIS - DIRECT EXAMINATION

1 A. Because we were going to be attacked by a very large  
2 force.

3 Q. Okay. Do you recall, while you were over in An Phu, ever  
4 increasing your medical supplies by 25 percent?

5 A. No.

6 Q. While you were over there, do you ever remember hearing  
7 about being attacked by some large force?

8 A. No.

9 Q. As the chief medic, would you be privileged to that  
10 information?

11 A. Yeah. And then looking at that -- looking at that  
12 appendix, according to this appendix, which just made me sick,  
13 look at all the people that got killed. Look at all the  
14 people that got wounded.

15 Q. Are you referring back to Appendix 14?

16 A. Yeah. I mean, it's so far-fetched that it's just a  
17 boldfaced lie. There wasn't -- none of that stuff happened.

18 Q. All right. Can you tell us a little bit about what camp  
19 A-424 was like when you arrived there?

20 A. When I arrived at camp An Phu, I came from a place called  
21 Akbak. And I was in the middle of nowhere in the planer reeds  
22 with two other Americans and a little little dinky company  
23 from what we call an FOB, a forward observation base, in the  
24 middle of nowhere. And I lived in a container, which is a --  
25 like a shipping container, and it was only ten feet by



## RICHARD SIROIS - DIRECT EXAMINATION

1 ten feet, and it was -- had six rows of sandbag on top and  
2 sandbag piled all the way around, and that's where we lived.  
3 We lived like a rat in that thing, because it was a fairly hot  
4 area and everything. But --

5 Q. Are you talking about An Phu?

6 A. No, at Akbak. And then when I got to An Phu, on a  
7 helicopter, I get off the helicopter and I look at this camp  
8 and I go, Wow, this place is neat. They even had a little old  
9 guy came out there, and he even took my sack and my little  
10 ditty bag, and he -- and then somebody came and said, Hey,  
11 Bac-si, come on. The place was like an R and R center.

12 Q. When you came in, you came in on a helicopter?

13 A. Yes.

14 Q. All right. How many helicopters were with you that day  
15 when y'all landed? When you came in on a helicopter, were you  
16 accompanied by another helicopter?

17 A. I don't think so, no. I just came in from Bakwa on a  
18 helicopter and I -- got to An Phu.

19 Q. The helicopter that brought you in, was it escorted by a  
20 gunship?

21 A. No.

22 Q. Okay. All right. So you got there and you said, hey,  
23 man, I think this place is cool.

24 A. Yes.

25 Q. Why did you think this place was cool?

## RICHARD SIROIS - DIRECT EXAMINATION

1 A. Because everybody was walking around, no weapons. We had  
2 our own little dining area over there. My dispensary was -- I  
3 looked into my dispensary, I couldn't believe it. I had two  
4 nice operating tables with sheets draped over them, my -- I  
5 met two nurses that worked there. They showed me into the --  
6 my little room behind the dispensary. I had a bunk there. We  
7 had sheets. It was like heaven. We had a shower, we had  
8 toilet facilities, we had somebody cooking our meals, we had  
9 somebody shining our shoes, we had somebody cutting grass with  
10 scissors. You name it. It was a country club.

11 Q. Okay. When I was in the Army we were required to have  
12 very short haircuts. Did y'all have to have haircuts over  
13 there?

14 A. Yes. Yes. Captain Marvin, you know, I would say that  
15 Captain Marvin was a good team leader and all, and he required  
16 us to be in uniform, you know, and to have haircuts and all  
17 that other stuff.

18 Q. Where would you get your hair cut?

19 A. Oh, to get my hair cut, I'd just go downtown.

20 Q. Downtown An Phu?

21 A. An Phu. In the village.

22 Q. So the little village, there was someone down there that  
23 would cut your hair?

24 A. Yeah.

25 Q. And when you would go to get your hair cut, would you have

## RICHARD SIROIS - DIRECT EXAMINATION

1 to have somebody accompany you for security reasons?

2 A. No. We'd go with a couple of guys, a couple of CIDG or  
3 Vietnamese Special Forces, maybe one of them would have an  
4 M-16. But if I went down to get a haircut or something, I  
5 just walked around with my .45, and I had a knife on me, on  
6 that belt.

7 Q. You didn't carry your M-16 with you?

8 A. No. Why should I?

9 Q. That's what I'm going to ask you. Why wouldn't you?

10 A. Not around -- I never carried an M-16 around at An Phu. I  
11 kept it right in my room. It was hanging up on a big nail.

12 Q. All right. Like we said earlier, you've read this book,  
13 you're familiar with the book.

14 A. Yes, I'm familiar with that book.

15 Q. All right. And you know there was some times mentioned in  
16 the book that said y'all were firing into Cambodia.

17 A. Yes. That --

18 Q. While you were a member of that team?

19 A. Well, according to these guys, and according to Marvin,  
20 yeah, we were firing into Cambodia.

21 Q. All right. So does that book accuse you of violating any  
22 crimes?

23 A. Even though it says that I didn't do it personally, yes, I  
24 think so. It's implied there that I'm a part of this team and  
25 I'm part of doing that. So yeah.

## RICHARD SIROIS - DIRECT EXAMINATION

1 Q. All right. As a member of an A Team, Special Forces A  
2 Team, you work very close with one another?

3 A. Yes, we're a very close-knit group, and we still are, as  
4 an organization.

5 Q. And y'all would work in -- if somebody was doing  
6 something, pretty much you were all involved in doing that  
7 with them?

8 A. Yes.

9 Q. All right. So if somebody was firing into Cambodia, you  
10 would have been involved in doing that with them?

11 A. Oh --

12 MR. BACHRACH: Objection, Your Honor.

13 THE COURT: Sustained. Rephrase the question.

14 BY MR. BEN DEEVER:

15 Q. If somebody was firing into Cambodia, a member of A-424,  
16 like it says in the book --

17 A. Yes.

18 Q. Is it possible that it could impute that on to you?

19 A. I would say so.

20 Q. And why?

21 A. Well, if Ray Johnson is firing into Cambodia, or James  
22 Taylor or any of those other guys, then that would mean that  
23 I'm there, too, right? So I'm -- I'm part of it, I'm part of  
24 that team, so yeah.

25 Q. Is it kind of like the all for one, one for all?

## RICHARD SIROIS - DIRECT EXAMINATION

1 A. I would say so.

2 Q. All right. How has this book affected you since it  
3 came -- since it's been published? First of all, let me ask  
4 you this. When you provided those tapes to Mr. Marvin --

5 A. Um-hum.

6 Q. Where were you at the time?

7 A. I was at Fort Devens, Massachusetts. I was still in the  
8 Army.

9 Q. You were still in the Army when he contacted you and asked  
10 you to provide those tapes?

11 A. Yes.

12 Q. What was your rank there?

13 A. I was a command sergeant major.

14 Q. All right. Do you mind if I play one of the tapes?

15 A. I don't care.

16 MR. BEN DEEVER: Your Honor?

17 MR. BACHRACH: Do you want to play it off this  
18 because it works better?

19 THE COURT: Okay.

20 (Audio tape was played.)

21 BY MR. BEN DEEVER:

22 Q. Mr. Sirois, do you remember making that tape?

23 A. Yes.

24 Q. All right.

25 A. I made that tape in around in maybe January or February or

## RICHARD SIROIS - DIRECT EXAMINATION

1 March or somewhere in there, 1988.

2 Q. All right. And were you approached by Mr. Marvin and  
3 asked to make this tape?

4 A. No. He called me up. The first time that I ever made  
5 contact with Captain Marvin, was he called me up, like I said  
6 before, he called me up and my wife answered the phone, and I  
7 can't remember the exact date, but it was either the end of  
8 '87 or the beginning of January, February of '88. And that's  
9 when he made contact with me.

10 And he called me and he says, Hi, how are you doing, this  
11 and that and chitchat and this and that and that. And that's  
12 when he told me that I was going to write a book. And I said  
13 over the phone, you're going to write a book, hey, man, that's  
14 cool. I was really happy. I says, What are you going to call  
15 the book? And he says, the Bassac Bastards. And I said, the  
16 Bassac Bastards? And he says yeah. I said well, that's  
17 pretty good. He says, I'm going to write a novel and it's  
18 going to be about the Hoa Hoas and all that stuff. Do you  
19 want to provide some information for me and everything? And I  
20 said sure. He says, can you send me off some tapes? I'd like  
21 to get also some materials from you about your past  
22 experiences, some tapes, I'd like to get, you know, I'll call  
23 you up later and we'll talk about this and so forth. I said  
24 sure, why not.

25 So about a week later I received a letter from him, and in

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1 the letter it had some questions. And, you know, I don't know  
2 what -- it was -- it said -- I can't remember what it said.  
3 But he wanted me to follow a sequence. If you can remember  
4 seeing the tape, it says -- it says this, and I keep on saying  
5 I don't remember, I don't remember, because I'm looking at the  
6 thing. And I'm trying -- he has all this extraneous stuff  
7 that never happened on there, trying to make me comment on it.

8 So that's what happened. I did readily send him the tapes  
9 and everything. He had called me a few times after that, and  
10 he sent me a manuscript in the mail. And the manuscript was  
11 about that big. I looked at the manuscript and perused  
12 through it kind of quickly. It was dull, it was boring, it  
13 didn't make any sense. And that was it. We -- and that was  
14 the -- my last time that I talked to him or anything until we  
15 went to the reunion.

16 Q. Okay. Do you remember what the name of the manuscript  
17 was?

18 A. You know, I think it was the Bassac Bastards, but I can't  
19 tell you for exact sure. But I know -- I did know that he  
20 told me he was going to write a book called the Bassac  
21 Bastards. And I did receive a manuscript. I received a  
22 manuscript from him, yes.

23 Q. What did you do with the manuscript?

24 A. I don't know. I think I threw it away.

25 Q. Now, you mentioned on the tapes something about sick call,

## RICHARD SIROIS - DIRECT EXAMINATION

1 that you'd get like 100, 150 people. Can you call the jury  
2 what sick call is?

3 A. Sick call is -- our camp at An Phu was -- I can't remember  
4 exactly how many companies that they had there at An Phu, but  
5 the whole area -- I think we were assigned five companies.  
6 I'm not sure. It could have been six. But anybody that was  
7 assigned to our company that was around the An Phu area and  
8 around An Phu, they used to bring their -- the CIDGs, the  
9 soldiers themselves. Now, I'm going to call these soldiers,  
10 but they were really civilians. They call it civilian  
11 irregular defense forces. And we treated -- I treated those  
12 people on sick call. Not wounded, not any of that stuff. All  
13 for the colds, the molds, the sore ass holes, the farks, the  
14 ficks and the freckles, that's what I call them. And in the  
15 afternoon they would take their wives and children, and I  
16 would treat them with the Vietnamese nurses. That's what sick  
17 call is.

18 Just like if you would say oh, I'm sick, I got a headache,  
19 they come. (Witness speaking in Vietnamese.) And I'd tell  
20 them the best I could in English, and then the Vietnamese,  
21 then I also had two nurses, one of them could speak fairly  
22 good English, so she would tell me what's going on, I would  
23 prescribe the medicine. Or they'd have a toothache, I would  
24 inject them and give them an injection, pull out their tooth.  
25 They would take their kid and their kid would be festered with



## RICHARD SIROIS - DIRECT EXAMINATION

1 sores, I'd clean them off and help them clean up, and we just  
2 ran it like a -- we tried to treat as many people as we could,  
3 because we had so many of them.

4 Q. So you just helped out the local people, they had stomach  
5 cramps --

6 A. Yes.

7 Q. -- headaches and what have you?

8 A. Yes.

9 Q. That's what the sick call was?

10 A. That's sick call.

11 Q. You mentioned something in the tapes about five or six  
12 helicopters brought in some wounded while you were there.

13 A. Yes.

14 Q. Do you know where these wounded came from?

15 A. No, but they weren't our -- they weren't our soldiers,  
16 they were -- like I said in the tape, I said they were H-34  
17 helicopters, and we had slicks. And all soldiers that came  
18 down there that were wounded, I have no idea where they came  
19 from. And they we were ARVN soldiers. ARVN. Regular  
20 Vietnamese Army soldiers. And they came down and they were  
21 wounded.

22 I don't know why they came to our camp. I still don't  
23 know why they came to our camp.

24 Q. Do you think they were from the An Phu district?

25 A. No.

## RICHARD SIROIS - DIRECT EXAMINATION

1 Q. And kind of in closing -- Well, you were here yesterday  
2 when Mr. Johnson testified?

3 A. Yes.

4 Q. All right. Do you remember him mentioning something about  
5 KKK?

6 A. Yes.

7 Q. Could you explain what that is?

8 A. KKK, I know is -- that's the term that Special Forces uses  
9 for the Cambodian soldiers. And my second tour that I was  
10 over there, I worked with them. Actually, after I left --  
11 after I left An Phu, I went up to Baswa, (phonetic) and that's  
12 where the KKK were.

13 Q. Okay. And also on the tape you mentioned --

14 A. I think KKK means -- (Witness speaking Vietnamese.) And  
15 we called them KKK. They were Cambodians. They were  
16 Cambodians.

17 Q. And I believe on the book -- or excuse me -- on the tape  
18 you mentioned something on the lines, I do really hope that  
19 you have success with the book.

20 A. Yes, I did.

21 Q. And at the time did you -- you really wanted him to have  
22 success?

23 A. Of course.

24 Q. Were you kind of excited that you were being contacted to  
25 provide information for this novel?

## RICHARD SIROIS - DIRECT EXAMINATION

1 A. Sure. Why not.

2 Q. You said you retired a command sergeant major?

3 A. Yes.

4 Q. Is that the highest rank of an enlisted man?

5 A. Yes.

6 Q. Enlisted man cannot achieve anything higher?

7 A. No. I spent 30 years in the Army. You can't spend 30  
8 years in the Army without making sergeant major or command  
9 sergeant major.

10 Q. Were you proud of your military career?

11 A. Yes, very proud.

12 Q. And from according to the tapes, you were extremely proud  
13 of the civic activities you did.

14 A. Absolutely.

15 Q. Sounded like you helped a lot of people.

16 A. I think so.

17 Q. Head sores, everything.

18 A. Yes. At An Phu.

19 Q. How has this book affected your life since it's been  
20 published?

21 A. Right now I'm going crazy, because every time I see this  
22 book, and I see what was written in it, you know, I don't know  
23 how to -- I don't really know how to put it in my own words.  
24 But I feel that I was actually used. And that just really  
25 makes me mad. Because he used me to give him information, he

## RICHARD SIROIS - DIRECT EXAMINATION

1 used me to provide some info and all that, and then he turns  
2 around, he has this book made, and yeah, I mean, I told him  
3 that he could use the -- my material and all that. But he put  
4 it into this book, and it's nothing but a pack of lies. The  
5 whole thing. Well, maybe not the whole thing, but 99 and  
6 99.99 percent, probably.

7 Q. I mean --

8 A. Everything that -- I mean -- Let me rephrase that, okay?  
9 Anything that says in there about my name, other than me  
10 being -- me being evacuated in the hospital with falciparum  
11 malaria, the short introduction -- and by the way, he uses in  
12 the introduction on page -- I forget what it is -- I think  
13 it's -- yeah, if you go to page 143. I just want to bring  
14 this out, because this is how he takes things and turns them  
15 around. Okay. I'm going to read this, because it just makes  
16 me mad.

17 "Richard Sirois, whom we all called Bac-si, was 25 years  
18 old, blond -- and his words, very small but wiry -- he always  
19 wore a commando knife."

20 I didn't always wear a commando knife.

21 "Born in Lawrence, Massachusetts, he spoke with a very  
22 pronounced New England accent." I still do. "His family was  
23 poor, as was mine, and he had 12 brothers and sisters." I am  
24 the oldest of 13. "He remembered getting into many fist  
25 fights before joining the Army and recalls losing most of them

## RICHARD SIROIS - DIRECT EXAMINATION

1 due to his small size. Some 22 years later he would tell me  
2 that his greatest influences while yet at home were his mom  
3 and dad and some teachers. He was an ideal Green Beret medic  
4 because he not only knew his stuff, he cared about the people  
5 he served and he had a 'can do' attitude." I loved that.

6 Then he says, "He called himself a cutter. 'You see,  
7 Dai-uy,' he told me, 'medics are either cutters or soakers.'  
8 Speaking of the treatment of cellulitis, he said most medics  
9 preferred soaking or using a hot water bottle to bring it to a  
10 head. He was one of those who went directly to the source and  
11 cut it out, stuffed it with iodoform gauze and treated the  
12 patient with antibiotics."

13 This part right here, this incident, I told him about  
14 later on. This -- he didn't -- I never said that I was a  
15 cutter with him. Because this happened to me, this name was  
16 coined for me after An Phu, not while I was in An Phu. So he  
17 took some of my material and put it in his book. He took all  
18 of my material that I gave him -- and by the way, I think he  
19 has other tapes -- because he couldn't have got these stories  
20 and put them in the book, because none of those incidences  
21 that happened in this book with me are true. They're all  
22 lies. They happened elsewhere. (sic) In another camp.

23 Q. So you're saying that what happened in -- where he  
24 mentions you in the book, did not happen at An Phu, it  
25 happened at --

## RICHARD SIROIS - DIRECT EXAMINATION

1 A. Bachu and Baswa.

2 Q. Where you went afterwards. Let me ask you one quick one.

3 MR. BEN DEEVER: It will be one, Your Honor.

4 Q. Were you there when Martha Raye arrived?

5 A. No.

6 MR. BEN DEEVER: Nothing further.

7 THE COURT: We'll take a morning break at this time.

8 You can go to your jury room and we'll start again in about 15  
9 minutes.

10 (Jury excused.)

11 (A recess was held at this time.)

12 THE COURT: Anything before I bring the jury in?

13 Bring them in.

14 (Jury present.)

15 THE COURT: Mr. Bachrach?

16 CROSS-EXAMINATION

17 BY MR. BACHRACH:

18 Q. Good morning, Mr. Sirois.

19 A. Good morning, sir.

20 Q. How are you doing?

21 A. I'm doing good. I never thought I'd be sitting down in a  
22 seat like this.

23 Q. Hopefully never again. Near the end of your testimony you  
24 testified that you did have the nickname Cutter?

25 A. Yeah. Oh, you mean -- no, that was just -- that comment,

## RICHARD SIROIS - CROSS-EXAMINATION

1 I told him about when we were just sitting down or in another  
2 tape or in a tape, but that nickname, Cutter, was not given to  
3 me until after -- after I was in An Phu. So he took that  
4 information and he put it in there.

5 Q. Okay. Directing your attention to page 143.

6 A. Okay.

7 Q. Now, you spoke to Colonel Marvin some 22 years after the  
8 incidents reported in the book, correct?

9 A. Yes. '66, he called me up '88, yeah, about 20 some years,  
10 I guess.

11 Q. And either on the tape or in a phone call, you indicated  
12 to him that you had the nickname Cutter.

13 A. Yes.

14 Q. And he wrote here, he called himself a cutter. Correct?

15 A. Correct.

16 Q. That statement's true?

17 A. That statement is true.

18 Q. I believe on direct testimony you acknowledged that you  
19 were not accused in the book of committing, directly, any  
20 crimes. Correct?

21 A. No, in the book -- in the book it doesn't say that I  
22 committed a crime.

23 Q. Did the book ever indicate you shot into Cambodia?

24 A. No.

25 Q. Did the book ever indicate you went into Cambodia?

## RICHARD SIROIS - CROSS-EXAMINATION

1 A. No.

2 Q. And, in fact, during the time of the alleged mutiny, you  
3 were in a hospital somewhere else; you were not in camp An  
4 Phu, correct?

5 A. I guess.

6 Q. Well, you know that, correct?

7 A. Yes.

8 Q. So the book doesn't accuse you of committing any crime.

9 A. As far as the mutiny is concerned, but the other things,  
10 like shooting into Cambodia and going into Cambodia and being  
11 a part to assassinate a prince, I had no knowledge of that.  
12 That's purely fictional.

13 Q. Where in the book did it say you had any part in  
14 assassinating a prince?

15 A. Well, I'm on this book, I'm in this cover, I'm in the  
16 book. Anybody that reads this book would naturally assume  
17 that since I worked with a closely-knit Special Forces A Team,  
18 they would assume that I was part of that. And that's what's  
19 making me mad. Because it's implied. I mean, it doesn't  
20 accuse me.

21 Q. Correct. The book does not accuse you.

22 A. No.

23 Q. And the book does not accuse you of shooting into  
24 Cambodia.

25 A. No, it does not.



## RICHARD SIROIS - CROSS-EXAMINATION

1 Q. And the book does not accuse you of going into Cambodia.

2 A. No, it does not do those.

3 Q. You mentioned something about an incident where a  
4 lieutenant was shot and killed.

5 A. That happened at Bachu.

6 Q. Is that referenced in the book anywhere?

7 A. No.

8 Q. So that's not referenced in the book?

9 A. That's not referenced in the book.

10 Q. Were you referring to some notes while you were testifying  
11 on direct? Did you have some notes up there?

12 A. Yes, I did.

13 MR. BACHRACH: May I see them, Your Honor?

14 THE COURT: Sure.

15 BY MR. BACHRACH:

16 Q. I believe you indicated before you made the tape for  
17 Colonel Marvin, that you received a letter from him with some  
18 questions?

19 A. Yes.

20 Q. And just so we're clear, is that this document here that  
21 you received from Colonel Marvin?

22 THE COURT: Do you have an exhibit number?

23 MR. BACHRACH: I just want -- yes, it's Exhibit --

24 A. No, that's not the -- that's not -- that's -- I think this  
25 came from the lawyers or something. I don't know.

## RICHARD SIROIS - CROSS-EXAMINATION

1 Q. Well, let me show you -- refer you to Exhibit 31.

2 A. Okay.

3 Q. Is this what Colonel Marvin sent to you?

4 A. It's been so long, that -- the first time I've seen it.

5 Yes. Probably so.

6 Q. So that's what -- when you were referring that he sent you  
7 a letter, Exhibit 31 is what he sent to you?

8 A. I guess so.

9 Q. And that was a questionnaire to get background from you?

10 A. Yes.

11 Q. And, in fact, going back to page 143, if you compare 143  
12 to Exhibit 31, he accurately reflected the information you  
13 provided on this questionnaire.

14 A. Where is that?

15 Q. Even to the extent where he said you were very small but  
16 wiry.

17 A. Yes.

18 Q. Did you have any conversations with any of the other  
19 plaintiffs before you made the tape?

20 A. No.

21 Q. You only spoke with Colonel Marvin?

22 A. Only -- I never seen Jim Taylor until the reunion of 1988.

23 Q. So that tape was made based on your memories, without  
24 anyone else's influence?

25 A. That's right.

## RICHARD SIROIS - CROSS-EXAMINATION

1 Q. And I'd like to just play the beginning of the tape for a  
2 second.

3 A. Okay.

4 (Audio tape was played.)

5 Q. So you made this tape to talk to him about what you  
6 remembered occurred at An Phu. Correct?

7 A. Yes.

8 Q. And throughout the tape the jury heard you use the word  
9 remember --

10 A. Yes.

11 Q. -- many times. And you were telling on this tape what you  
12 remembered, and you intended it to be true, correct?

13 A. That's correct.

14 Q. And on this tape you indicated that there was a lot of  
15 action around an FOB, but you couldn't remember the name.

16 A. That's right.

17 Q. And that was true.

18 A. That's true.

19 Q. Were there American soldiers located at that FOB?

20 A. The only American soldiers that I know that were located  
21 at the FOB, there could have been two Americans at that time  
22 at Phu Hiep. But that's all.

23 Q. And does it refresh your memory if I told you the FOB you  
24 were describing, because of its distance from the Cambodian  
25 border, was Phu Hiep?

## RICHARD SIROIS - CROSS-EXAMINATION

1 A. Yes, it was -- Phu Hiep was the FOB that the Americans  
2 from A-424 manned. There was two of us.

3 Q. And you recalled there being a lot of action up at Phu  
4 Hiep.

5 A. There wasn't a lot of action, but there was action.

6 Q. These are your words on the tape.

7 A. Okay.

8 Q. You said on the tape, a lot of action took place in Phu  
9 Hiep.

10 A. That's correct.

11 Q. And you said on the tape you were scared going up there.

12 A. Why not?

13 Q. Well, you described the area as a resort. Why -- you  
14 wouldn't be scared in a resort area.

15 A. An Phu. But I had to get in a boat with Vietnamese  
16 soldiers and go up the Bassac River in two small boats,  
17 usually there was six or eight guys in each boat, were going  
18 20 -- 15 to 20 miles an hour, we have to come up the river and  
19 then go on a tributary. And the thing wasn't no wider than  
20 this room at some places. And here we were, two boats with  
21 M-16s going up to this outpost up at Phu Hiep. There could  
22 have been two Vietnamese or VC or NVA with AKs, and they could  
23 have just picked us all off at 500 meters away.

24 The reason that I -- and I even said that in the tape, I  
25 was scared going up there, but I wasn't -- I said since we

## RICHARD SIROIS - CROSS-EXAMINATION

1 were in the area where the Hoa Hoas were, and they were  
2 friendly with us, I really -- nothing ever happened.

3 Q. And on the tape you described there being North Vietnamese  
4 regiments outside of Phu Hiep.

5 A. That's what Marvin said. I never seen them.

6 Q. But on the tape you said that there were North Vietnamese  
7 regiments?

8 A. Yeah, of course. I mean, I'm the medic, and he tells us  
9 there's a regiment up there. I'm a medic, I'm a spec five.

10 Okay, sir.

11 Q. Well, there's -- your own people weren't shooting at you  
12 at Phu Hiep. You said there was a lot of action up at Phu  
13 Hiep. Your own people weren't shooting at you.

14 A. I wasn't -- I'm not talking about that type of action,  
15 sir. I'm talking about at night we're up there, we're at Phu  
16 Hiep, people at Khanh Bin, you hear a little bit of probing, a  
17 couple of machine gunfire, some -- a little bit of probing.  
18 They call up the FOB where we were, and they'd say to us, oh,  
19 we hear -- we see some enemy activity out there. Can you  
20 throw us out a couple of illumination rounds from the 81, or a  
21 couple of HE rounds from the 81? And the Vietnamese would go  
22 to the mortar pit and they'd drop a couple of rounds in there  
23 and that would be it.

24 Q. Just --

25 A. That's what my action, what I'm talking about. It was all

## RICHARD SIROIS - CROSS-EXAMINATION

1 this little action around those outposts, but never around An  
2 Phu.

3 Q. But there was action.

4 A. Oh, yeah. A lot of action.

5 Q. And you indicated that you heard stories of the American  
6 soldiers coming back to the camp at An Phu and telling you  
7 about more action up there than when you were up there.  
8 Correct? You said that on the tape.

9 A. I -- somebody told me that there was -- at one time that  
10 Khanh Bin got overrun or something like that. And there was a  
11 lot of casualties. But after reading the book, that  
12 supposedly happened in May. And I have no knowledge of that,  
13 because I never treated anybody that was in a big action with  
14 500 some people getting killed.

15 Q. Well, who -- on the tape though you indicated that someone  
16 told you there was a lot of action up --

17 A. Yeah, someone told me, I don't know, Marvin or --

18 Q. Well, who told you?

19 A. I guess it was Marvin.

20 Q. Well, how do you know -- Why do you guess it was Marvin?

21 A. I don't know.

22 Q. Wouldn't you have said on the tape, you told me? You  
23 didn't say you told me, you said others came back and told me.

24 A. No. It had to be somebody else, one of the med team, a  
25 person on the team that told me. Because I don't -- I can't

## RICHARD SIROIS - CROSS-EXAMINATION

1 put the incidents in May, to me, that have no bearing,  
2 there's -- there was no wounded; that's what I'm getting at.

3 Q. Now, when you were making this tape, you were using your  
4 best memory and remembering what occurred.

5 A. Yes.

6 Q. And you were providing this to Colonel Marvin, as you said  
7 in the tape, to insert in his book, insert what memories --

8 A. Of course.

9 Q. Now, you indicated that before you arrived, you had heard  
10 about a lot of action or a lot of weapons were captured by the  
11 camp at An Phu. Correct?

12 A. That's correct.

13 Q. And who did you hear that from?

14 A. Marvin.

15 Q. Well, again, you didn't say you told me this; you  
16 indicated that you heard it from others. Did you hear it from  
17 Marvin or did you hear it from the others?

18 A. I heard it from Marvin. He said that they captured a lot  
19 of weapons and everything. And I can't remember the incident  
20 where they captured a lot of weapons. We have pictures of  
21 them, that this -- you know, there was pictures even before  
22 that. And they had a victory party and supposedly they had  
23 all these captured weapons out there. And I'm trying to  
24 figure out when that was.

25 Q. It was before you came.

## RICHARD SIROIS - CROSS-EXAMINATION

- 1 A. Oh, it was before I came.
- 2 Q. And you saw pictures of the dead bodies?
- 3 A. Pictures. I didn't never see any dead bodies.
- 4 Q. And if I remember correctly, your words were, "I remember
- 5 a few times when I was at An Phu and there were other guys
- 6 from our team up there and they received a lot more mortar
- 7 rounds." Do you recall saying that on the tape?
- 8 A. Yes.
- 9 Q. Do you recall -- now, I think you referenced that you had
- 10 notes when you were making the tape? During the tape a couple
- 11 of times you referred to notes.
- 12 A. Right. That -- you know, that kind of -- it's kind of
- 13 vague, but I remember that he sent me something and he wanted
- 14 me to comment on them. Yes.
- 15 Q. But you had some notes you were referring to.
- 16 A. Yes.
- 17 Q. And notes you had made.
- 18 A. I would imagine so, yeah.
- 19 Q. And what happened to those notes?
- 20 A. Oh, I don't know. I threw them away or whatever.
- 21 Q. And you made the notes because you wanted this tape to be
- 22 as accurate as possible.
- 23 A. Absolutely.
- 24 Q. And you wanted your memories on this tape to be as
- 25 accurate as possible?



## RICHARD SIROIS - CROSS-EXAMINATION

1 A. Yes, I did.

2 Q. Is there anything untrue on the tape?

3 A. On the tape?

4 Q. Yeah.

5 A. No.

6 Q. And you made the tape because Colonel Marvin told you he  
7 was writing a book called the Bassac Bastards, and that it was  
8 going to be about the Hoa Hoas and your experience, correct?

9 A. Yes.

10 Q. Just let me digress for a moment. You indicated in your  
11 training that you had dog lab training?

12 A. Yes, I did.

13 Q. What was the dog lab training?

14 A. Dog lab training was a program for Special Forces medics  
15 that was incorporated into their program a long long long time  
16 ago. And it was a school where it was set up at the old  
17 hospital area, and the patients were dogs.

18 Q. And what did it incur?

19 A. It incurred taking animals from -- it incurred taking  
20 dogs, putting them down with anesthesia --

21 MR. BEN DEEVER: Objection, Your Honor, relevancy.

22 THE COURT: I'll sustain the objection.

23 MR. BACHRACH: He --

24 THE COURT: I'll sustain the objection.

25 MR. BACHRACH: Thank you, Your Honor.

## RICHARD SIROIS - CROSS-EXAMINATION

1 THE COURT: You're welcome.

2 BY MR. BACHRACH:

3 Q. Do you recall saying on the tape at one point, "What else  
4 do I remember about the good old Bassac?"

5 A. Yes, I did remember that.

6 Q. Do you recall saying on the tape, "I remember all the  
7 things that happened in the camp?"

8 A. Yes, I did.

9 Q. And throughout the tape, you only mentioned An Phu, Hoa  
10 Hoas, Chau Doc, correct?

11 A. Correct.

12 Q. You concluded the tape by saying, "These are the things I  
13 remember from An Phu."

14 A. Yes.

15 Q. Directing your attention to page 171.

16 A. Where is that?

17 Q. On page 171?

18 A. Yes.

19 Q. The next-to-last paragraph.

20 A. She came in?

21 Q. Yeah, "She came in all out of breath and told us one of  
22 the local women was having trouble giving birth. Well, we  
23 didn't hesitate, Dai-uy. Co Lau, Tony and I went right away  
24 with her to the health center. When I saw the lady was in a  
25 lot of pain, I checked her out real quick and found out she

## RICHARD SIROIS - CROSS-EXAMINATION

1 had a breech baby."

2 You, in fact, on the tape discuss that incident, correct?

3 A. Yes.

4 Q. On the tape you also discussed an incident where a mortar  
5 round was shot off from the camp, I take it, it was short and  
6 it unfortunately killed a young boy?

7 A. That incident was told to me by Marvin.

8 Q. You didn't --

9 A. I wasn't even there when that happened.

10 Q. You're sure Colonel Marvin told you?

11 A. I'm not sure on that. Somebody on the team told me.

12 MR. BACHRACH: Bear with me for a second, I'm trying  
13 to find that. We might have to play the tape.

14 BY MR. BACHRACH:

15 Q. On the tape you indicated that, "Another incident that  
16 came into my mind was I heard that there was a village down  
17 the Bassac." So that's something that was told to you, it  
18 wasn't something that you actually witnessed?

19 A. I heard there was something down the village?

20 Q. You said, "Another incident that came into my mind was  
21 when I heard that there was a village down the Bassac where we  
22 had shot a few 4.2 deuce rounds, and one of the rounds was too  
23 short and it landed by a village and it killed a young boy."

24 A. Yes, I did say that. But that's referring to the incident  
25 of what somebody told me.

## RICHARD SIROIS - CROSS-EXAMINATION

1 Q. And again, you didn't indicate to Colonel Marvin that he  
2 told you about this.

3 A. Well, I'm just -- see, he wanted incidents and stuff, and  
4 I thought that was an important one, because I had heard, when  
5 I was in Vietnam at An Phu, I had heard from either Marvin or  
6 somebody else, prior to me getting there, that there was a 4.2  
7 round or a 155, I don't know what it was, the Vietnamese  
8 fired, and it was a short round, and it exploded, and a  
9 shrapnel -- it was a freak thing -- one little boy was killed  
10 and his head was severed.

11 And they went out there and there was a big deal about it  
12 and everything. But it -- somebody told me on the team that  
13 they really, you know, they accepted the thing that it was a  
14 war going on, that there's artillery rounds being fired and so  
15 forth. That they couldn't find his head. And they made a big  
16 issue out of that. So I thought maybe he forgot about that  
17 incident, and I said it. That's all.

18 Q. And you've been here throughout the entire trial?

19 A. Yes, I have.

20 Q. And you listened to Lieutenant Strait's tape where he  
21 recounted the same incident?

22 A. That's exactly right.

23 Q. Now, at one point you indicated on the tape that while you  
24 were in the hospital, there was discussion about the 9th ARVN  
25 regiment coming down toward the camp?

## RICHARD SIROIS - CROSS-EXAMINATION

1 A. No, not the 9th ARVN regiment.

2 Q. 9th division?

3 A. 9th American division.

4 Q. 9th American division?

5 A. Yes. You got to remember, it was in 1966, and there was  
6 no American troops in Fourth Corps, and they were fixing to  
7 bring a whole other division in there. That's when the build-  
8 up was real big. So they were interested in where I was at  
9 around An Phu, because that was, you know, Fourth Corps  
10 operations, and they didn't think that falciparum malaria,  
11 that strain of mosquitoes that causes falciparum malaria, you  
12 know, they were very concerned about that, because they knew  
13 that if an American division moved around in that area, a lot  
14 of people would be coming down with falciparum type malaria,  
15 and that was their concern, I guess.

16 Q. Were they building up that area with American presence?

17 A. Not while I was there, no. They just told me that in the  
18 hospital. That's why I said it.

19 Q. Okay. You were told that they were building it up?

20 A. I -- while I was in the hospital, the team from Walter  
21 Reed questioned me, where I was. And they said -- one of them  
22 told me, says the reason why we're asking you all these  
23 questions is they're going to bring in a division down in the  
24 Fourth Corps area. So that's why I said it. I have no idea  
25 if they -- if they ever brought them down or not.

## RICHARD SIROIS - REDIRECT EXAMINATION

1 MR. BACHRACH: I have no further questions.

2 THE COURT: Thank you.

3 MR. BACHRACH: Let me return your notes.

4 A. Thank you, sir.

5 MR. BACHRACH: You're welcome.

6 REDIRECT EXAMINATION

7 BY MR. BEN DEEVER:

8 Q. You're a member of A-424, correct?

9 A. Yes.

10 Q. This book claims that A-424 was shooting into Cambodia,  
11 correct?

12 A. Yes.

13 Q. Were you a member of A-424 at the time when this book  
14 alleges that A-424 was shooting into Cambodia?

15 A. Yes.

16 MR. BEN DEEVER: Nothing further, Your Honor.

17 MR. BACHRACH: I'm not going to promise any number of  
18 questions, but they will be few.

19 RECROSS-EXAMINATION

20 BY MR. BACHRACH:

21 Q. I just want to clarify for the jury.

22 A. Okay.

23 Q. You're not accused of shooting into Cambodia.

24 A. Not by the book, but it's implied.

25 Q. No. You're not accused in the book of shooting into

## RICHARD SIROIS - RECROSS-EXAMINATION

1 Cambodia.

2 A. No.

3 Q. You're not accused of going into Cambodia.

4 A. No.

5 MR. BACHRACH: No further questions, Your Honor.

6 THE COURT: Thank you very much, sir.

7 Call your next witness.

8 MR. COLLINS: Call Chris Millegan to the stand.

9 THE COURT: Okay.

10 THE CLERK: State your name for the record.

11 A. Robert Millegan.

12 ROBERT MILLEGAN, a witness called by the plaintiffs, first  
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. COLLINS:

16 Q. Morning.

17 A. Good morning, sir.

18 Q. Are you Chris Millegan?

19 A. Yes, I am Chris Millegan. My real name is Robert  
20 Millegan. A girl gave me the nickname Chris many years ago.

21 Q. Can I ask you why?

22 A. She told me I looked more like a Chris than a Bob, and I  
23 thought she looked -- I was -- she was a nice girl. She  
24 called me Chris.

25 Q. How are you employed, Mr. Millegan?

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 A. I am a publisher.

2 Q. Okay. Do you work for a publishing company?

3 A. Yes.

4 Q. And which one is that?

5 A. It's Trine Day.

6 Q. Is Trine Day the same company that published the book that  
7 we're here on, Expendable Elite?

8 A. Yes, it is.

9 Q. What's your position with that company?

10 A. I'm the publisher.

11 Q. Are you an officer of the company?

12 A. My office is -- it's an LLC. In Oregon you have a  
13 member -- I'm a member of the LLC.

14 Q. Who are the other members?

15 A. Ed Bishop and Russ -- I can't think of Russ' last name.

16 Q. Are both of those individuals involved in the day-to-day  
17 operations of Trine Day?

18 A. Ed is -- helps me with computer and graphic work, and Russ  
19 is an editor. Russ was not there at the time of Expendable  
20 Elite.

21 Q. Okay. Where did you come up with the name Trine Day?

22 A. Came up with the name Trine Day many many years ago. I  
23 came up with it in a town called McMinnville, Oregon. It -- I  
24 figured there was a Double Day, why couldn't there be a Trine  
25 Day.



## ROBERT MILLIGAN - DIRECT EXAMINATION

1 Q. Is there any significance to the word trine? I've just  
2 never -- I'm not familiar with that word.

3 A. Trine means auspicious, and it was sort of a play on  
4 words, you know, going to work is kind of a Trine Day, so it  
5 was kind of a play on words, and it means auspicious, a good  
6 day. I enjoy good days.

7 Q. Fair enough. What kind of books does Trine Day publish?

8 A. Trine Day publishes books that are suppressed, and about  
9 secret history.

10 Q. Would it be fair to say that the majority of the books  
11 published by Trine Day involve conspiracy of some sort?

12 A. You could call that there's conspiracy involved in some of  
13 the books, yes. They talk about conspiracies, yes.

14 Q. What other books has Trine Day published?

15 A. We have a book called America's Secret Establishment, a  
16 book called Fleshing Out Skull and Bones, an Investigation  
17 into America's Most Powerful Secret Society.

18 Q. I'm sorry to cut you off, but I want to make sure that I  
19 and the jury understand. The first one is Ambushed in  
20 America?

21 A. No, the first book that Trine Day published is called --  
22 was called America's Secret Establishment, an Introduction to  
23 the Order of Skull and Bones.

24 Q. Let's start with that one. What's Skull and Bones?

25 A. Skull and Bones is a secret society at Yale University,

## ROBERT MILLIGAN - DIRECT EXAMINATION

1     founded in 1832.

2     Q.   And what do they do?

3     A.   Well, there's a lot of things that they allege they do.   A  
4     lot of the -- there's a lot of intelligence members in Skull  
5     and Bones.   They are a society -- they tap -- when you're a  
6     junior at Yale, you can be tapped for Skull and Bones, they  
7     tap 15 people.   And then generally after graduation, they help  
8     each other out, help each other get jobs and help each other  
9     when they need money and different things.   And it's a  
10    fraternal organization that's -- well, members of Skull and  
11    Bones own Sears, they own K-mart, they own Federal Express,  
12    they've run most of the major banks in the country.   They're  
13    well -- very well connected people.   Our president is a  
14    member, his father was a member, his grandfather was a member  
15    of the Order of Skull and Bones.

16    Q.   So it's kind of a fraternity, if you would?

17    A.   Well, no, it's not a fraternity.   If it was a fraternity,  
18    it would be classified under 50(c)(10) classification.   It's  
19    actually classified as a 50(c)(3) classification.   It says  
20    that it helps with the education of Yale students, except --  
21    and it gives out a \$5000 scholarship to Yale every year.

22    Q.   Okay.   Now, what other books has Trine Day published?

23    A.   Let's see.   We published Ambushed, a History of the Bush  
24    Family.

25    Q.   Is --

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 A. We have --

2 Q. Ambushed -- I'm sorry. Ambush is a history of the Bush  
3 family; how does that involve conspiracy or secrecy?

4 A. Well, there are a lot of stories about the Bush family  
5 being involved in the financing of Hitler, the Nazis, there's  
6 quite a bit of story in there about Prescott Bush and his  
7 involvement in Brown Brothers Harriman, and their involvement  
8 with the financing of Adolf Hitler before World War II.

9 Q. Financing of Adolf Hitler?

10 A. Yes, it's quite -- Brown Brothers Harriman is an  
11 investment banking company in New York, and they ran the  
12 Hamburg American Steamlines, they ran the Silesian Steelworks.  
13 There's a lot of documentation about it. How much would you  
14 like me to talk about it, sir?

15 Q. I'm just trying to get a thumbnail of --

16 A. Okay.

17 Q. So that's fine. Now, you also published a book called  
18 Sinister Forces?

19 A. Yes, Sinister Force is a Grimoire of American Political  
20 Witchcraft, yes.

21 Q. Political witchcraft. Now, what is political witchcraft?

22 A. Political witchcraft was a title that was picked up out of  
23 a story in the Village Voice in the 60s.

24 Q. Okay. Octopus Conspiracy?

25 A. Yes.

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 Q. That's another Trine Day book?

2 A. Yes, it is.

3 Q. And what's the subject matter of that book?

4 A. Octopus Conspiracy is written by a gentleman, he was  
5 editor-in-chief of High Times Magazine for about 20 years, and  
6 it's a collection of his articles that ran in High Times  
7 Magazine.

8 Q. Okay. What was the subject matter of High Times Magazine,  
9 for those of us --

10 A. High Times Magazine is a cannabis-orientated magazine.  
11 Marijuana.

12 Q. Let's talk about Expendable Elite a little bit. How did  
13 you first come in contact with Colonel Marvin?

14 A. I contacted -- I was having conversations with an author  
15 by the name of Jim Morris. He has written several books, best  
16 sellers and whatnot. And he informed me that that day he had  
17 spoken with a lieutenant colonel who was having problems  
18 getting his book published.

19 Q. And that was Colonel Marvin?

20 A. Yes.

21 Q. Now, did you contact Colonel Marvin?

22 A. Yes, I did.

23 Q. All right. And what did he tell you?

24 A. He told me he had a book.

25 Q. About what?

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 A. About Vietnam.

2 Q. What about Vietnam?

3 A. It was his memoirs, it was his story of his service in  
4 Vietnam.

5 Q. Did he tell you at that time that the book involved a plot  
6 to assassinate Prince Sihanouk of Cambodia?

7 A. I don't think so. I don't really -- I don't talk a lot on  
8 the phone, and I can't type really well, I type with a couple  
9 fingers, so basically I asked him to send me, you know, send  
10 me a copy, let me look at it.

11 Q. Okay. And did he?

12 A. Yes, he did.

13 Q. Did he send you a copy of a work known as Expendable  
14 Elite, or was it at that time still Bassac Bastards?

15 A. I believe it was called something else. And when a book  
16 is published, it is the publisher's prerogative to title the  
17 book. It's basically left up to the publisher. And I chose  
18 the title Expendable Elite.

19 Q. Okay.

20 A. It was one that was on a list.

21 Q. Okay. On a list of what?

22 A. Of possible titles for the book.

23 Q. Okay. So when it arrived, the manuscript arrived to you,  
24 it was not Expendable Elite.

25 A. No, it was not entitled Expendable Elite. It was -- he

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 sent me several different manuscripts that had several  
2 different titles. That's not unusual in the publishing field.  
3 I receive manuscripts all the time that have had different  
4 titles.

5 Q. So he sent you more than one manuscript?

6 A. Yes, he did.

7 Q. How many did he send you?

8 A. Well, at the time he sent me, they were working on one  
9 manuscript that he had -- it was in a diary form, and he was  
10 working with a lady in New York, editing it, making it more  
11 read like a story book, you know, read more -- they --  
12 basically taking it out of a diary form and putting it in more  
13 of just a book form.

14 Q. Do you have any knowledge as to whether or not the  
15 original manuscripts of Bassac Bastards were intended to be a  
16 novel?

17 A. No, they were not.

18 Q. They were not?

19 A. No. It says right on them that they're a true story. On  
20 the Bassac Bastards, it says right in the front it says this  
21 is a true story.

22 Q. On the ones that you received?

23 A. On the -- every copy that I've ever seen of Bassac  
24 Bastards, it says on it, it's a true story.

25 Q. So you're not aware of any representations that Colonel

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 Marvin ever made to anyone that the original manuscripts of  
2 Bassac Bastards were novels?

3 A. No, Colonel Marvin sent me his history that he -- I was  
4 aware that Colonel Marvin had wanted to write about his  
5 experiences, and had first contacted DOD, and was told that he  
6 had to have the thing vetted. And then he felt like he wanted  
7 to do one as a novel. And then he -- I mean, it says right  
8 there in his thing that, you know, at one time he did, and  
9 then he stopped. And every manuscript since then, it says  
10 true story, you know, from 1988 on.

11 I mean, I had an author here who was writing a story and  
12 had sent his book out to his men to vet it, and they had sent  
13 him back tapes that confirmed it.

14 Q. Okay. Let's talk a little bit about that, since you  
15 brought it up. The term vetting, what does that mean?

16 A. Vetting means to go through a manuscript and, to your best  
17 of your ability, to try and make sure that it's true and  
18 accurate.

19 Q. Did you do that?

20 A. Yes, I did. And I also, because of the book being, you  
21 know, of an age and memories, we also put in a disclaimer at  
22 the front of the book that this book was, you know -- as far  
23 as memory, you know, that we got this stuff from memory, from  
24 audio tapes, from all these different sources, and that we  
25 were going to try and make it as well as we could, yes. We

## ROBERT MILLIGAN - DIRECT EXAMINATION

1     tried to do a good job.

2     Q.   Okay.  Were you personally responsible for vetting this  
3     work?

4     A.   Yes, I was.

5     Q.   Now, what else did Colonel Marvin send you other than the  
6     manuscripts?

7     A.   He sent me -- let me see.  There was a letter from General  
8     Dang, there were notes that General Dang had done in his own  
9     hand about some of the incidents.  There was a letter from  
10    Tony Trung, there was a letter from Fam, there was a -- there  
11    was letters that Colonel Marvin had sent to his wife about  
12    certain incidences.  There was copies of letters that his wife  
13    had sent to his daughter.  There were -- what do you call  
14    it -- newspaper articles from Vietnam that talked about the  
15    action there.  There was newspaper articles with pictures that  
16    talked about the action there.  There was the tapes from  
17    Sirois, two tapes from Strait, a tape from Johnson.  There  
18    were magazine -- newspaper articles from the United States  
19    from 1988 on.  There was a letter from Jimmy Dean saying how  
20    he had read parts of the book and how good it was.  There were  
21    some of the letters from the rejected people -- the other  
22    publishers that had rejected it, including statements that  
23    said, you know, they believed the book, they just didn't want  
24    to get involved with it because of its spooky nature.

25    Q.   Okay.  When you say spooky nature, what do you mean?



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1 A. Well, in the book it talks about the CIA. We're talking  
2 about the CIA. There have been books that have had a hard  
3 time coming to publication because of their telling of CIA  
4 operations, such as The Politics of Heroin of Southeast Asia,  
5 had a very torturous road before it was allowed to be  
6 published.

7 Q. Okay. Now, you mentioned that he had sent you copies of  
8 the tapes from Mr. Sirois, Mr. Johnson and Mr. Strait?

9 A. Yes.

10 Q. And you listened to those tapes?

11 A. Yes, I did.

12 Q. All right. Was there ever anywhere in any of these tapes  
13 that had anything to do with the assassination of Prince  
14 Sihanouk?

15 A. No. And I wouldn't expect that most of those men would be  
16 aware of that. I mean, he does say that he told -- talks to  
17 them about that in the book, but the clearance of the men and  
18 the clearance of Colonel Marvin are two different things.  
19 Colonel Marvin had a security clearance; I don't believe the  
20 men did. So I don't believe that the men would be involved  
21 with the assassination plot, except on a need-to-know basis.

22 I do have a -- my family members are CIA, so I have done a  
23 lot of study of intelligence operations, so I understand how  
24 things do work.

25 Q. So Colonel Marvin was going to pull off this caper by

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1 himself?

2 A. No, Colonel Marvin was going to use the Hoa Hoas. I mean,  
3 the Hoa Hoas, you know, it's not just a village. The Hoa Hoas  
4 are like 60 plus thousand people. The Hoa Hoas are a very  
5 potent political force in Vietnam. The Hoa Hoas at one time  
6 had their own personal army. Okay? No, he was going to be  
7 doing this with the Hoa Hoas. According to information that I  
8 am aware of, the Hoa Hoas were used in Cambodian operations in  
9 the early 60s.

10 Q. But that's not what the book says, is it?

11 A. The book doesn't talk about the early 60s at all.

12 Q. Doesn't the book talk about Colonel Marvin having a  
13 meeting, and briefing his team members on supposedly the  
14 secret mission that was given him by Walter Mackem?

15 A. It does get in there, and he says that he does brief them,  
16 yes.

17 Q. Okay. So according to Colonel Marvin, he's going to  
18 use -- or have the assistance of his team members with this  
19 plot, isn't that correct? He's not going to use the Hoa Hoas,  
20 as you testified to.

21 A. No, I believe, sir, that the team members are going to be  
22 used for training of the Hoa Hoas. And if you read the book  
23 carefully, sir, you'll see that the assassination plot is to  
24 be carried out by Hoa Hoas, not to be carried out by  
25 Americans. Because how -- if they got -- it states in there

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1 they got caught, they would be blamed on North Vietnamese.

2 And I do not think that they would try and claim that

3 Americans killed over there would be a North Vietnamese. But

4 if you had a Hoa Hoa that was killed on a mission, you could

5 claim that he would be a North Vietnamese.

6 Q. All right. Let's talk a little bit about the publishing  
7 history of this work. Are you aware of how many publishers  
8 actually rejected the manuscripts of Colonel Marvin?

9 A. I believe it was over 100, sir.

10 Q. Okay. So you were at least 101?

11 A. I reject book offers all the time. I mean, having a book  
12 rejected is not a sign that the book is invalid.

13 Q. Even by as many as 100 publishers?

14 A. You know, many books and well made movies were rejected by  
15 well over 100 publishers, I'm sure. I don't know of any, but  
16 I know that many works have been rejected many many times  
17 before they've been bought.

18 Q. When you listened to the tapes of Mr. Strait and  
19 Mr. Sirois and Mr. Johnson, did you make any efforts to  
20 contact them to see whether or not their story was valid, and  
21 if they approved of the manuscripts?

22 A. No, and in listening to the tapes it was quite obvious  
23 that they were recounting, and they even gave Colonel Marvin  
24 permission to use his -- the incidences and to use their names  
25 in it. And it's a memoir of Vietnam. And in -- I mean, I've

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1 red a lot of memoirs of Vietnam and World War II and other  
2 things, and I mean, this is an American operation. I mean,  
3 this is something that our dollars paid for. We are not  
4 supposed to know who the people are that fought in our wars?  
5 I mean, I don't understand. I mean, in a memoir that if I  
6 wrote a story about my life, I'm not supposed to tell the  
7 people's names? I don't understand. So --

8 Q. Well, you'll agree that we're dealing with rather  
9 sensitive issues.

10 A. I personally do not, because of my understanding of what  
11 happened in Vietnam, and the revelations that have come out  
12 since then, and the Church Committee and other things, I do  
13 not think it's a very sensitive book. I mean, the word mutiny  
14 is not the word -- was not used in the book. The word mutiny  
15 was not attached to this book until these people attached it  
16 to it.

17 Q. Nonetheless, you would agree that firing into Cambodia,  
18 the assassination of a leader of another country, certainly  
19 can be considered sensitive issues; so much so, sir, don't you  
20 believe that the reasonable and prudent publisher would at  
21 least go behind these tapes and check with the ultimate source  
22 and ask him if it was true?

23 A. No. Looking at the history of the book, I mean, I had an  
24 author, and basically he was doing his -- you know, he was  
25 trying to get the right story, he was contacting these

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1 gentlemen, they were offering these tapes freely to him, and  
2 telling him that he can -- they can use the incidents and they  
3 can use his name.

4 No, I did not feel that I had to contact them. It was my  
5 second book I'd ever done. There's no rules. I mean, you  
6 know, I have tried, you know -- There's rules for publishers,  
7 you know.

8 Q. How do you even know that the voices that you heard on  
9 these tapes are the people that said they made them? When you  
10 listen --

11 A. They were represented to me as that those were the people  
12 on those tapes. I had no reason to -- Am I to suspect that  
13 Colonel Marvin is some kind of Tolkein guy and he's making all  
14 this up? And he's creating, you know, files and documents and  
15 he's creating newspapers from Saigon in 1964, and he's  
16 creating all this -- you know, I mean, there's a lot of black  
17 and white that confirms Colonel Marvin's story. And more  
18 black and white, you know, from the Joint Chiefs of Staff that  
19 I've collected since then, you know, lessons learned, where  
20 they go through and they talk about, you know, the thing at  
21 Khanh Bin. And it's -- I find this whole thing ridiculous.

22 Q. Quite frankly, as do we. But the issue is, don't you  
23 think it would have been an easy thing to do to pick up the  
24 telephone, contact these three men, three telephone calls  
25 would have been all it would have taken, and you could have

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1 sat here today and said yes, Mr. Collins, I talked to Sirois,  
2 I talked to Johnson and I talked to Strait, and they all  
3 verified everything in this book as being true. Now, that  
4 seems like a rather simple task to me.

5 MR. BACHRACH: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. BACHRACH: Argumentative.

8 THE COURT: Rephrase the question.

9 BY MR. COLLINS:

10 Q. Is that a simple task?

11 A. I did not have any of their numbers. We have a name by  
12 Jim Taylor, I mean, how many Jim Taylors are there in the  
13 world? I didn't know where to contact these people.

14 Q. Did you ask your author for the numbers?

15 A. No, I did not.

16 Q. All right. Now, the next thing I want to cover with you  
17 is basically something about the business of publishing,  
18 because I'm rather unfamiliar with it. Do you buy the rights  
19 to the book from the author?

20 A. No.

21 Q. How does that work?

22 A. I gave him an advance against royalties.

23 Q. Okay.

24 A. Basically the author owns the book, he has the copyright  
25 on it. There are some publishers that take copyrights and

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1 stuff, but I don't do that. I thought -- the copyright stays  
2 with the author. All I engage with is the ability to publish  
3 and distribute the book.

4 Q. Okay. Did you have a written contract with Colonel  
5 Marvin?

6 A. No, I had a letter of intent.

7 Q. Okay. And what were the terms of that letter of intent?

8 A. Was that I would pay him 15 percent of what I received.

9 Q. And how much have you received?

10 A. Very little. Let me see. I figured it out the other day.  
11 Basically he's made about 4000 -- less than \$4000 worth of  
12 royalties.

13 Q. Okay. Now, on how many sales? Approximately.

14 A. I was here before and I was mistaken; I said we sold about  
15 2000. Actually there was 2000 distributed. We've sold about  
16 between 15 and 1600. Some of those other sales were free  
17 sales. And then I sell them to Colonel Marvin for \$5  
18 sometimes, when he wants copies.

19 Q. Okay. Is the book currently still being distributed?

20 A. Yes, it is.

21 Q. Okay. Did you ever receive any notice regarding the  
22 distribution of the book from the Special Forces Association?

23 A. Yes, I did.

24 Q. All right. I draw your attention to Exhibits 2 and 3.

25 MR. COLLINS: May I approach?

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1 THE COURT: Sure.

2 Q. And ask you to --

3 A. Yes, that is the first letter I received from the Special  
4 Forces.

5 Q. All right. Now you received that letter after publication  
6 of the book?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. Okay. And what's the substance of that letter,  
11 Mr. Millegan?

12 A. Well, they say that they aren't aware of my vetting  
13 procedures for people such as Mr. Marvin. However, they  
14 surely leave a dubious impression of credibility with us. At  
15 the outset we found five statements on the inside cover of  
16 your book to be false and misleading. We also find in  
17 reference to the book, Mr. Marvin's use in calling and --

18 THE COURT: Mr. Millegan, slow down a little bit.

19 A. -- Ye shall know the truth and the truth shall make you  
20 free, is insulting to the members of this association.

21 They're offended by Mr. Marvin's fictional account of  
22 covert operations with us, and insist that you, as publisher,  
23 take immediate measures to change this book to fiction by a  
24 dreamer, or remove it from all avenues and sources of sales  
25 within the next 30 days of the date of this letter.



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1 And should I ignore this request, we will have no recourse  
2 other than legal action and publication of our documentation  
3 to disprove these published false statements.

4 And it says, to clearly determine our promise, should you  
5 fail to believe our challenge, we invite you to inquire of  
6 Warner Books or CNN about our resolve when the truthfulness of  
7 U.S. Special Forces combat operations is at stake.

8 And he wants Colonel Marvin to apologize.

9 Q. Okay. Now, what action, if any, did you take as a result  
10 of receiving this letter?

11 A. I sent a copy to Colonel Marvin. I published it on my web  
12 site.

13 Q. Okay. Did you take any steps to find out whether or not  
14 the allegations regarding false and misleading statements  
15 contained in your book were, in fact, correct?

16 A. The letter, to me, seemed like a bullying harassing  
17 letter. And my mother told me not to respond to bullies.

18 Q. So you did nothing?

19 A. I published it on my web site. I gave it to Colonel  
20 Marvin. Colonel Marvin responded to the Special Forces  
21 Association.

22 Q. So you did not respond?

23 A. I published it on my web site. That was my response.

24 Q. The letter or the response?

25 A. I published my letter to the world, to let the world know

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 on the Internet that these people were -- had a problem with  
2 book, yes.

3 Q. Did you become concerned at that time as to whether or not  
4 the -- there were fictions in the book?

5 A. Not a great deal, no.

6 Q. Did you subsequently receive another letter?

7 A. Yes, I did, sir.

8 Q. I believe that's Plaintiffs' Exhibit 3. Is that the  
9 letter that you received?

10 A. Yes.

11 Q. All right. I'm not going to ask you to read all of that  
12 into the record, because I think the jury can do that. So if  
13 you would, just sort of summarize your belief as to the  
14 content of that letter.

15 A. Well, again, it goes to more harassment and, you know, it  
16 says here requested, and they put in parentheses, demanded  
17 action. I mean, I didn't really see it as something where  
18 they were trying to have a conversation with me; they were  
19 trying to make me do something. Okay?

20 Q. What were they trying to make you do?

21 A. They wanted me to stop publication of the book.

22 Q. Okay.

23 A. I believe that Colonel Marvin had a right to tell the  
24 story.

25 Q. Did you contact the people that sent you this letter?

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 A. No, again, I published this on the web. I directly went  
2 and put this directly up on web.

3 Q. Did you seek any legal advice?

4 A. No, I did not.

5 Q. Did you stop dissemination of the book?

6 A. No, I did not.

7 Q. Do you believe it's reasonable, when a person receives  
8 correspondence such as this, to take no action?

9 MR. BACHRACH: Objection, Your Honor.

10 A. There was nothing that --

11 THE COURT: Wait, wait. What's the objection?

12 MR. BACHRACH: He's asking for a legal conclusion.

13 THE COURT: Overruled. Go ahead.

14 A. There was no documentation at all. They just -- they made  
15 statements. There was no documentation to back it up that  
16 said that any bit of it was fiction. And I had statements  
17 from the plaintiffs themselves confirming everything in the  
18 book. I had tons of documentation. They did not send me any  
19 documentation, they sent me nothing but threatening letters.

20 Q. That's really the key, isn't it? How do you know you had  
21 statements from the plaintiffs?

22 A. How do I know I had statements from the plaintiffs?

23 Q. You didn't bother to contact them.

24 A. I felt that I had statements from the plaintiffs.

25 MR. COLLINS: One moment, Your Honor, please.

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 BY MR. COLLINS:

2 Q. Mr. Millegan, I'm going to ask you to look at Plaintiffs'  
3 Exhibit No. 7. I'm not sure whether you have seen this or  
4 not. It appears to be something that was authored by Colonel  
5 Marvin. Have you ever seen that document before?

6 A. I don't think I have.

7 Q. Okay. Well, I'll represent to you that that is something  
8 that has been introduced into evidence in this case. I'll  
9 call your attention to the second paragraph of it.

10 A. Um-hum.

11 Q. Where it says, "Thus, in 1981 I began rewriting it as  
12 fiction based on fact, a novel called the Bassac Bastards."

13 A. Yes.

14 Q. All right. You see where it says that?

15 A. Um-hum.

16 Q. Now, does that appear to be a representation from Colonel  
17 Marvin that Bassac Bastards is a novel?

18 A. Well, if you read -- continue reading, he says there,  
19 "Three years of rejections culminated in the realization that  
20 presenting the truth as a novel betrayed the trust of the  
21 people we had abandoned in South Vietnam, I temporarily set  
22 the project aside, troubled that important revelations in the  
23 Vietnam War would be considered by many reasons (sic) as  
24 antiestablishment fiction."

25 So, I mean, yeah, I do not deny that the Colonel at one

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 time said that he was going to write a novel, a fiction based  
2 on fact. But all the documents -- all -- everything that I've  
3 ever seen is that he abandoned that.

4 Q. Okay.

5 A. It's been quite clear --

6 Q. What I'm trying to understand is that when Colonel Marvin  
7 began writing this work, apparently from this, and the  
8 testimony of the plaintiffs, it began as a novel project.

9 A. No, it did not. According to this it started off right  
10 near in 1978 I was putting together a military diary. That  
11 is -- I don't know how you're -- you're just trying to twist  
12 things around trying for your case, sir.

13 Q. No, sir, I'm not, I'm merely reading the words that  
14 Colonel Marvin wrote. He says a novel --

15 A. Just read the word --

16 THE COURT: Stop. Mr. Millegan, she can't take both  
17 of you, there's no stereo here.

18 A. Excuse me.

19 THE COURT: He's not going to step on you and you're  
20 not going to step on him.

21 A. Thank you, sir.

22 THE COURT: Ask your question.

23 MR. COLLINS: I apologize.

24 BY MR. COLLINS:

25 Q. Doesn't it, in fact, say a novel called the Bassac

## ROBERT MILLIGAN - DIRECT EXAMINATION

1 Bastards?

2 A. Yes, sir, there is a sentence that says that.

3 Q. Okay. Now, I'd like to call your attention to Exhibit 11,  
4 please, which again I'm not sure that you have seen, but I  
5 will represent to you that it is in evidence and marked as  
6 Plaintiffs' Exhibit No. 11.

7 A. I don't believe I've seen this.

8 Q. Okay. So again I would call your attention to an area in  
9 the middle of the page with the sentence that begins, I began  
10 rewriting.

11 A. Yes, this seems to be a draft of basically that other  
12 thing that you showed me, something very similar to it, yes.

13 Q. Again, a reference to Bassac Bastards as a novel.

14 A. Yes, there's also references to the book as not being a  
15 novel, too.

16 Q. Okay. All right. Mr. Millegan, one last thing, and this  
17 is, I believe, Exhibit 23, if I'm not -- is that right? 23?  
18 Which appears to be some newspaper clippings. You testified  
19 earlier that you had been sent some newspaper clippings by  
20 Colonel Marvin.

21 A. Yes.

22 Q. Are those some of the clippings that you received from  
23 Colonel Marvin?

24 A. This particular clipping, I did not receive, no.

25 Q. Okay, very good. Thank you.

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1 A. Um-hum.

2 MR. COLLINS: Thank you, Mr. Millegan, that's all the  
3 questions I have.

4 A. Thank you.

5 MR. BACHRACH: Your Honor, other than a few  
6 clarifications, I'd like to reserve mine for direct.

7 THE COURT: Okay.

8 CROSS-EXAMINATION

9 BY MR. BACHRACH:

10 Q. How are you doing, Chris?

11 A. I'm doing fine, sir.

12 Q. As it was indicated on direct, timing is everything,  
13 correct? He indicated to you that timing is -- I'd like to  
14 direct your attention to Plaintiffs' Exhibit 7, and can you  
15 read the paragraph beginning, in November 1986?

16 A. "In November 1986, Professor Robert Doherty, my mentor and  
17 close friend, expressed a keen interest in my desire to  
18 publish a book telling of my experiences in Vietnam. He  
19 advised I write it as nonfiction. Inspired by his enthusiasm  
20 in the project and his empathy for the people of South  
21 Vietnam -- excuse me -- I'll slow down -- I launched into the  
22 project with vigor, finishing in a little over two years time.  
23 Multiple rejections followed multiple submissions..."

24 Q. That's all I wanted. So by 1986, according to this,  
25 Colonel Marvin began writing it as nonfiction?

## ROBERT MILLEGAN - CROSS-EXAMINATION

1 A. Yes, that's my understanding.

2 Q. And it wasn't until, as you've heard the testimony, 1988,  
3 that the plaintiffs -- he began to discuss with the plaintiffs  
4 and he circulated a manuscript?

5 A. Yes.

6 Q. So by the time he circulated, in 1988, manuscripts to the  
7 plaintiffs, he was writing a nonfiction?

8 A. Every manuscript that I've seen has said it's a true  
9 story. On the beginning.

10 Q. And you were also shown Plaintiffs' Exhibit 11?

11 A. Yes.

12 Q. Which is entitled the Bassac Bastards and the People of An  
13 Phu.

14 A. Yes.

15 Q. And it starts off saying a true account of the independent  
16 warfare, correct?

17 A. Yes.

18 Q. And could you read -- publish this paragraph for the jury  
19 until I tell you when to stop.

20 A. "Nonfiction? I knew from personal experience that assets  
21 within the U.S. Government could not --" excuse me.

22 "Nonfiction? I knew from personal experience that assets  
23 within the U.S. Government could be called on to silence my  
24 efforts to get the truth published. On the 29th of January,  
25 1984, my daughter, Danilee, led me to the Lord Jesus Christ,



## ROBERT MILLEGAN - CROSS-EXAMINATION

1 and I knew I no longer had to fear anyone on this earth. I  
2 would fear and follow my Lord Jesus. I began to assemble and  
3 organize all that I had in my possession relating to An Phu.  
4 In 1986, inspired by the enthusiasm Professor Robert Doherty  
5 radiated for my project and his empathy for the people of  
6 South Vietnam, I launched into the task with renewed vigor,  
7 finishing a little over two years time."

8 Q. So again, this shows the timing that by 1986, and -- by  
9 1984 when the Colonel became saved, and by 1986, when he was  
10 inspired by -- I'm sorry, I forgot his name.

11 A. Doherty.

12 Q. Yes, thank you. That he was began writing a nonfiction.  
13 And thus, the Bassac Bastards became a nonfiction at about --  
14 you know, before the time in 1988 when he circulated it to the  
15 plaintiffs.

16 MR. COLLINS: Object, Your Honor.

17 THE COURT: Sustained.

18 BY MR. BACHRACH:

19 Q. You've heard the testimony that the plaintiffs were  
20 contacted for the first time in or about 1988 concerning the  
21 Bassac Bastards?

22 A. Yes, I have.

23 Q. And by 1988, he was writing a nonfiction.

24 A. Yes.

25 Q. You were shown two letters from the Special Forces

## ROBERT MILLEGAN - CROSS-EXAMINATION

1 Association?

2 A. Yes.

3 Q. Other than the papers that the letters were written on,  
4 did the Special Forces Association give you any other  
5 information?

6 A. None.

7 Q. So they gave you no documentation or anything to support  
8 their claim that the book was false?

9 A. No, they said they had documentation, but they never  
10 supplied me with it.

11 Q. So they -- so you were not given any information to  
12 support their challenge?

13 A. No. None.

14 Q. And that was in the face of weighing the reams of paper  
15 and information that you had from Colonel Marvin?

16 A. Yes.

17 Q. And there was a bit of a discussion about the plaintiffs'  
18 tapes here. In fact, those were the plaintiffs' tapes,  
19 correct?

20 A. As has been testified here, yes. And --

21 Q. And, in fact, you heard Mr. Sirois testify that the tape  
22 he made is -- he recounted what's truth from his memory.

23 A. Right, and he said that Colonel Marvin could use the  
24 things and to use his name, yes.

25 Q. And you heard on Mr. Strait's tape that he could use his

## ROBERT MILLEGAN - CROSS-EXAMINATION

1 name, correct?

2 A. Yes. Yes.

3 Q. And you heard on Mr. Strait's tape, him saying this is  
4 my -- I remember, these are my memories, throughout the tape.

5 A. Right. I had a history of an author who had been writing  
6 a book, and then had got it to a certain point and then sent  
7 it to other people that knew about the book so that they could  
8 confirm or deny or, you know, add things to it. That, you  
9 know. So that's -- yeah, that was my understanding of how it  
10 had transpired.

11 MR. BACHRACH: That's all I have for now, Your Honor,  
12 I'll save the rest for when I put him on direct.

13 THE COURT: Okay.

14 MR. DEAVER: The plaintiffs rest, Your Honor.

15 THE COURT: All right. Mr. Millegan, you can step  
16 down.

17 THE COURT: Ladies and gentlemen of the jury, we'll  
18 go to lunch at this time. We'll start at quarter to 2:00.  
19 The plaintiffs have just rested, so we'll start the  
20 defendants' case this afternoon. We'll see you then. Have a  
21 good lunch.

22 (Jury excused.)

23 MR. OGIBA: Your Honor, one thing before you go to  
24 lunch.

25 THE COURT: Sure.

1 MR. OGIBA: We have a defendants' Daniel Marvin and  
2 Trine Day, LLC, a motion for judgment as matter of law, given  
3 that the plaintiffs have rested, if you'd like to review it  
4 over lunch.

5 THE COURT: I'll take a look at it. Thank you. See  
6 you at quarter to.

7 (A recess was held at this time.)

8 (Jury not present.)

9 THE COURT: I'm just going to take your motion under  
10 advisement, we'll just go forward this afternoon. You can  
11 argue it afterwards.

12 MR. BACHRACH: Your Honor, we have just run into a  
13 witness problem. Tony Trung just called, said he's not going  
14 to be able to make it. We'd like to then just read his  
15 deposition into the record.

16 THE COURT: Okay. Any problem with that?

17 MR. COLLINS: No.

18 MR. BACHRACH: One thing, Your Honor, that may or may  
19 not help. Exhibit 1 to his deposition was the battle map  
20 which is in the book. And it may help for the jury if we use  
21 this, because I have him pointing to it during his deposition.

22 THE COURT: Any problem with that?

23 MR. DEEVER: Your Honor, I don't know where that  
24 battle map came from. It's not been presented to us, it  
25 hasn't been an exhibit. We have several in the book. And --

1 THE COURT: I thought Mr. Bachrach said --

2 MR. BACHRACH: It's in the book.

3 MR. DEAVER: There's several in the book.

4 MR. BACHRACH: It's the one on the inside cover.

5 MR. DEAVER: Can you tell us who prepared it and when  
6 and any of that?

7 MR. BACHRACH: Chris, how was this --

8 THE COURT: It really doesn't make any difference  
9 because this book is in evidence and this map is in evidence.

10 MR. DEAVER: But he made -- Mr. Trung, at the  
11 deposition, made marks and the directions and things on the --

12 MR. BACHRACH: Well, that's correct, Your Honor, then  
13 the marks are not on this. I suppose what we could do,  
14 because he'll be close enough to the jury, is if he uses this  
15 and just points to what Mr. Trung did on this.

16 THE COURT: Or sit there together and you can  
17 transpose Mr. Trung's marks to the big map, so everybody can  
18 see it.

19 MR. DEAVER: If we can assist on it, we'll be glad  
20 to, Your Honor.

21 THE COURT: If you can do it that way, you can do it  
22 that way. What I'm saying is use the big map, and when  
23 Mr. Trung made a notation on the little map, you just  
24 translate it onto the big map so everybody can see it. As  
25 long as it's Mr. Trung's pointing and not your making

1 something up; that's what we're worried about.

2 MR. DEEVER: And I spent the whole lunch hour  
3 preparing for this argument.

4 THE COURT: Which one?

5 MR. DEEVER: The motion.

6 THE COURT: You'll get to make it, you just won't get  
7 to make it now. I'll hear the argument, but I think it's  
8 probably going to be denied, but I'm going to hear your  
9 argument, proof of damages is not -- the way you state it is  
10 not required the way you state it's supposed to be. Okay? If  
11 you look at the charge on actual damages, it's humiliation,  
12 wounded feelings, et cetera, et cetera, which there's evidence  
13 to support that. Okay?

14 MR. OGIBA: Okay.

15 THE COURT: Now, there is no evidence to support any  
16 claim of special damages by the plaintiff. None. Okay? Do  
17 y'all disagree with that?

18 MR. DEEVER: No, Your Honor.

19 MR. COLLINS: I wish we could.

20 THE COURT: I'm not sending the issue of special  
21 damages to the jury in the plaintiffs' case. Okay?

22 MR. DEEVER: There was --

23 MR. OGIBA: Or punitives either, Your Honor.

24 THE COURT: I haven't seen punitive -- you know.

25 Actual malice would support a punitive damages verdict, and

1 actual malice, even you agree, is going to the jury.

2 MR. OGIBA: Okay.

3 THE COURT: Okay? Because you didn't ask --

4 MR. OGIBA: But the defamation argument, Your Honor,  
5 the first argument we made?

6 THE COURT: First argument, that dog doesn't hunt  
7 either, I don't think, because if you look at the damages that  
8 are in my jury charge, it has these things that are not  
9 capable of monetary -- what does it say -- humiliation,  
10 wounded feelings, mental anguish, whatever it is. I think  
11 there's evidence, at least on most, if not all, the plaintiffs  
12 to support that claim. But we'll go individually when we get  
13 to that later this afternoon.

14 MR. OGIBA: Okay. I guess I was asking about the  
15 first point we were making as to the defamation element.

16 THE COURT: Oh. Commission of a crime by implication  
17 supports -- is a defamation.

18 MR. OGIBA: Okay.

19 THE COURT: Okay? This is a team effort on both  
20 sides, all right?

21 MR. OGIBA: Okay.

22 THE COURT: There's an Am.Jur. and a South Carolina  
23 says it doesn't have to be direct, it can be implied. And I  
24 believe the charge even said it can be implied. So you don't  
25 have to have -- you committed a crime, just, you know, y'all

1 committed a crime. But we'll go individually on that.

2 Bring the jury in. So we're starting out of the box after  
3 lunch with reading Mr. Trung's deposition?

4 MR. OGIBA: Correct.

5 (Jury present.)

6 THE COURT: All right. Before lunch the plaintiff  
7 rested. Now it's time for the defendant to start their case.  
8 And so, Mr. Ogiba, Mr. Bachrach, call your first witness.

9 MR. OGIBA: Thank you, Your Honor, we'll call Tony  
10 Trung.

11 THE COURT: Mr. Trung is going to testify by  
12 deposition just like Mr. Tuttle did, because he couldn't be  
13 here. So this is the testimony, you know, deposition of Tony  
14 Trung, and this is evidence in this case and should be  
15 considered by you as evidence in this case, and you judge the  
16 credibility of this evidence just like you would any other.

17 MR. OGIBA: Thank you, Your Honor.

18 (Deposition of Tony Trung was read.)

19 MR. BACHRACH: I guess this isn't in evidence. Do  
20 we put the map as marked into evidence?

21 THE COURT: That's fine. Not the big one, the little  
22 one?

23 MR. BACHRACH: The little one.

24 THE COURT: Okay. Any objection to putting that map  
25 into evidence? The little one?



1 MR. BEN DEAVER: Can we take a quick look at it?

2 THE COURT: Sure.

3 MR. BEN DEAVER: No, sir, Your Honor.

4 THE COURT: Okay. That's the next plaintiffs'  
5 exhibit in evidence.

6 THE CLERK: No. 40.

7 THE COURT: Thank you.

8 MR. BACHRACH: Your Honor, I'd like to enter the Tony  
9 Trung letter in as an exhibit.

10 THE COURT: Any objection?

11 MR. BEN DEAVER: No, sir, Your Honor.

12 THE COURT: Okay, sure. 41 in evidence. Call your  
13 next witness.

14 MR. BACHRACH: Colonel Marvin.

15 THE CLERK: State your name for the record.

16 A. Daniel Marvin.

17 DANIEL MARVIN, a witness called by the defendants, first  
18 having been duly sworn, testified as follows:

19 MR. DEAVER: Your Honor, could we have about a five  
20 minute recess, please? While he's doing this.

21 THE COURT: He's almost done. We'll stop for five  
22 minutes. We're going to go this afternoon, okay? Ladies and  
23 gentlemen, go to your jury room for five minutes, we'll be  
24 right back.

25 (A recess was held at this time.)

## DANIEL MARVIN - DIRECT EXAMINATION

1 THE COURT: Bring the jury in for me.

2 (Jury present.)

3 THE COURT: Mr. Bachrach, you're up.

4 MR. BACHRACH: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. BACHRACH:

7 Q. Good afternoon, Colonel Marvin, how are you doing?

8 A. I'm doing absolutely outstanding, thank you.

9 Q. Could you state your birth date?

10 A. I was born on the 10th day of October 1933.

11 Q. Where were you born?

12 A. Detroit, Michigan.

13 Q. Where do you live now?

14 A. I live in Casanovia, New York. Well, just outside, 1.1  
15 miles outside of Casanovia, New York, on Route 13.

16 Q. Are you married?

17 A. Yes, I'm married 49 years.

18 Q. Do you have children?

19 A. I have 11 -- three children, 11 grandchildren and two  
20 great grandchildren.

21 Q. Congratulations.

22 A. One just three days ago.

23 Q. Boy or girl?

24 A. A boy. Ethan.

25 Q. Could you outline for me your education?

## DANIEL MARVIN - DIRECT EXAMINATION

1 A. I don't have a high school education. I -- my dad left  
2 the day I was born, and we were poor. And we moved from  
3 Detroit to Chicago, and then from -- oh, many different  
4 places. I was in actually 14 different locations before I  
5 finished the tenth grade. And the day I was 16 years old, my  
6 mother told me to quit work and to get a job and to bring the  
7 money home. And that's what I did.

8 Q. And for how many years did you work?

9 A. I worked from the time I was 12 years old, on farms,  
10 until -- then when I quit that day when I was 16, I went to  
11 work for Cornell University as a bus boy, and then a janitor,  
12 and I loved the work at Cornell. As a janitor, it was first  
13 time I had brand new clothes from top to bottom, even shoes.  
14 And from janitor to short-order cook, and I baked, fried and  
15 scrambled 36 dozen eggs every morning at the student union  
16 building at Cornell University.

17 Q. How long did you do that?

18 A. Until June 1952, when I joined the United States Army from  
19 Syracuse, New York. And I was blessed that they let me in,  
20 because I had flat feet. But it was during the Korean War,  
21 and they needed people bad. So my complete examination in  
22 Syracuse was the doctor looked at me and said, how do you  
23 feel, son? I said, I feel great. He said, Anything wrong  
24 with you? I said, Not that I know of. Passed.

25 Q. So how -- could you outline for me your military history?

## DANIEL MARVIN - DIRECT EXAMINATION

1 A. Yes, I joined as enlisted man, went to -- took my basic  
2 training in Indian Town Gap, Pennsylvania. Went to leadership  
3 school there, was an acting sergeant first class --

4 Q. Can I stop you right there; what's leadership school?

5 A. It was to teach you the traits that are expected of you as  
6 a non-commissioned officer in the infantry. Was done by the  
7 5th Infantry Division at Indian Town Gap, Pennsylvania.

8 Q. You can continue.

9 A. And it was to prepare me to be appointed an acting  
10 sergeant, so I could be a field first sergeant for a basic  
11 training unit in the 5th Infantry Division.

12 Q. And that was right after you entered the military?

13 A. Yes.

14 Q. If you --

15 A. And I went from there to officer's candidate school at  
16 Fort Belvoir, Virginia, and I passed in the top ten percent of  
17 the class. I had to take a G.E.D., so I'd have at least a  
18 high school education to get into OCS. And I graduated in  
19 August of '53, I believe it was, and took over a job as  
20 executive officer in headquarters company of the  
21 79th Engineering Construction Group. And I was privileged to  
22 be there at Fort Belvoir when they deactivated the last all-  
23 black unit, the 92nd Engineer Battalion. And I helped in --  
24 just helping develop the situation on post amongst the NCOs  
25 and officers, as an officer, to make the change in the system

## DANIEL MARVIN - DIRECT EXAMINATION

1 work smoothly.

2 Q. So that it was no longer segregated?

3 A. That's correct.

4 Q. So you assisted with the integration?

5 A. That's correct.

6 Q. And can you continue; what happened -- what was your next  
7 military involvement?

8 A. From the 79th Engineer Construction Group, I volunteered  
9 for Korea. Went to Korea, got there just at the very end of  
10 the war. I didn't get involved in any heavy fighting, I got  
11 involved in a little bit of guerrilla warfare or against  
12 guerrilla warfare. I was in the 185th Combat Engineers. We  
13 served the First Marine Division, oddly enough. We built  
14 roads for them, we built the prisoner-of-war exchange  
15 compound, we built the peace building there where they did all  
16 the peace talks. And I guess the biggest project we had was  
17 building the underground I Corps headquarters in Korea off of  
18 MSR-1 and the 43rd Mobile Army Surgical Hospital, which a TV  
19 movie was made out of that outfit called the 4033 MASH.

20 Q. What's the I Corps?

21 A. There were four corps in Korea like there were four corps  
22 in Vietnam. It's a geographical area that's militarily based.

23 Q. When was the Korean War officially declared over?

24 A. I don't know.

25 Q. Were you there before or after?

## DANIEL MARVIN - DIRECT EXAMINATION

1 A. I was there just shortly before.

2 Q. And did you see any combat action while you were in Korea?

3 A. Just guerrillas trying to infiltrate our compound, steal  
4 ammunition.

5 Q. And then what was your next military experience?

6 A. I came home from Korea and I got out of the Army, hoping  
7 to work on the farm. We had a 100-acre potato farm. I liked  
8 dirty work on the farm. Unfortunately, my mother had  
9 remarried and bought the farm, and then she and my -- I denied  
10 my -- what you do when you're an officer, you have a category  
11 when you're second lieutenant, and just as you make first  
12 lieutenant, you have the opportunity to extend or deny your  
13 category. I wanted to be home on the farm, so I denied my  
14 category, but unfortunately, between that time and the time I  
15 got home, my mother and brother had sold the farm out from  
16 under my stepfather and myself. And I had a dickens of a time  
17 just finding them at the time. And I was only out for a short  
18 time, and then I re-enlisted. Because without a high  
19 school -- without a formal high school education and two years  
20 of college, the Corps of Engineers, which was a combat corps,  
21 part I was in, would not let me back in. So I had to  
22 re-enlist as a sergeant first class, which was my permanent  
23 rank.

24 And I went -- I stayed right there at Fort Belvoir as a  
25 motor sergeant in the -- I can't remember the number of that

## DANIEL MARVIN - DIRECT EXAMINATION

1 unit right now. But I had 137 vehicles that I supervised the  
2 maintenance of, I had two crews, I worked two different crews.  
3 I never slept much. Four or five hours a day was the most up  
4 until right now, that I sleep. So I supervised two crews in  
5 the motor pool and the 178th engineer.

6 Q. And what did you do next?

7 A. From there, Warrant Officer John Quotier, who I got to  
8 know somehow, convinced me that I should go airborne. And  
9 that's when I volunteered for jump school, and I went out to  
10 Fort Bragg, North Carolina, where they had the 34-foot tours  
11 as part of their jump school. In fact, my grandson just went  
12 through there about a year ago, and I'm proud of him. He's  
13 just had his ninth jump. And I went through jump school in  
14 1956, went through jump master school, went to -- was assigned  
15 the 82nd Airborne Division and 307th Airborne Engineer  
16 Battalion. I volunteered to take over the supply room,  
17 because they just failed an IG inspection. And I went in  
18 there with a tough will, I moved right into the supply room,  
19 refrigerator and everything, never hardly left it, had my own  
20 bathroom and everything. And I got it squared away so within  
21 60 days we passed with an outstanding rating in the IG  
22 inspection.

23 From -- I was almost immediately asked to be -- become  
24 battalion supply sergeant. So I went up and took over  
25 battalion supply sergeant under Captain Harry Corkill. And

## DANIEL MARVIN - DIRECT EXAMINATION

1 we -- I was battalion supply sergeant during the Suez crisis  
2 and a few other things. We worked around the clock many times  
3 in the 82nd Airborne Division. It was called at that time --  
4 am I talking too fast? At that time it was called America's  
5 Guard of Honor. It still is called America's Guard of Honor.

6 And from the 307th Engineers, Captain Harry Corkill, who  
7 was the division supply operations officer, asked me if I  
8 would come up and be a division supply operations sergeant.

9 So I went right on up to the 82nd Airborne Division  
10 logistical center, and took over that job. So I was  
11 responsible for the logistical support of the 82nd Airborne  
12 Division operations, working with all the supply sergeants.

13 From there, Colonel Harry -- Captain Harry Corkill, who  
14 later became lieutenant colonel, volunteered me for a program  
15 where they were --

16 MR. DEAVER: Your Honor, may I object to this  
17 testimony? I know he's relating background and everything,  
18 but he's bringing in all of these fine things that people are  
19 saying about him that --

20 THE COURT: All right, all right. Let's move it  
21 along, okay? We're going to be here till Thursday of next  
22 week. All right, let's go.

23 BY MR. BACHRACH:

24 Q. What --

25 A. Okay. I went from the -- he recommended me for a program



## DANIEL MARVIN - DIRECT EXAMINATION

1 for outstanding NCOs for a direct commission to first  
2 lieutenant. I went into that program, went to work for  
3 Colonel Helen Bouffier at 18th Airborne Corps, then went to  
4 work for General Bob Saint down in Third Army, because those  
5 two people had to personally approve it. And --

6 MR. DEEVER: Object again, Your Honor, this is just  
7 pure hearsay that he's talking about, and --

8 A. It's in the record, sir.

9 THE COURT: It's not in the record until you say it,  
10 all right?

11 A. I'm sorry.

12 THE COURT: Let's get to the issues in this case.  
13 Nobody disputes his military record, all right?

14 BY MR. BACHRACH:

15 Q. When did you join the Special Forces?

16 A. The day that President John F. Kennedy was assassinated, I  
17 was working out of Yuma prison ground where we tested airborne  
18 equipment. And I volunteered that day to be a Green Beret.  
19 Because my best friend loved President Kennedy, and he was a  
20 Green Beret from the very beginning. And I went to  
21 parachute -- not parachute, excuse me -- I went to special  
22 warfare school in the spring of 1964.

23 Q. Well, in -- Let me direct your attention, I'll move it  
24 forward to when you went to Vietnam. When did you first go to  
25 Vietnam?

## DANIEL MARVIN - DIRECT EXAMINATION

1 A. I arrived in Vietnam on the 22nd day of December of 1965.

2 Q. Now, what type of security clearance did you have as of  
3 that time?

4 A. Top secret, which I still had at retirement.

5 Q. And what are the classifications of security?

6 A. There was confidential, secret and top secret, and then if  
7 you're assigned, like I was at one time in Europe, to a NATO  
8 organization, top secret cosmic, so I had anything I had a  
9 need to know, and then in NATO, that was top secret, I could  
10 have privy to that.

11 Q. So at the time you went to Vietnam you had top secret  
12 classification?

13 A. That is correct.

14 Q. Now, in the book, and there's been much made about your  
15 first meeting with Colonel Tuttle. Could you describe,  
16 directing you to that meeting, could you describe what  
17 occurred?

18 A. Yes. I had breakfast with Colonel Tuttle in the mess  
19 hall, and then he invited me up to his office. And on the way  
20 up he told the sergeant major to keep the building clear. He  
21 took me into the briefing room, and he had a map of the area  
22 that he controlled, which was the Fourth Corps area. And he  
23 had a map of showing all the B Teams and all the A Teams. And  
24 he said -- I'm going to cut this as quick as I can. He asked  
25 me if I would like to volunteer for a very special mission.

## DANIEL MARVIN - DIRECT EXAMINATION

1 And I said yes. I was kind of like a born volunteer. And he  
2 said we have a need for an officer to command an independent  
3 operation in An Phu, Vietnam, with -- and you would be the  
4 very first to take the war to the enemy in their safe havens  
5 in Cambodia.

6 Q. Now, did you have any further missions in connection with  
7 this assignment?

8 A. Yes. There was a -- one of the missions of An Phu was  
9 district advisory. And, in fact, Lieutenant John Strait, who  
10 testified here, was also the adviser to the district chief.  
11 And he had a lot of hats. He performed his job admirably.

12 Q. Now talking about you.

13 A. All right.

14 Q. What mission, further mission were you given by Colonel  
15 Tuttle?

16 A. Well, had the normal everyday operational missions of an A  
17 Team. And this kind of an operation, that was civic action,  
18 psychological operations, the security of the border of  
19 30 miles of border was our responsibility. And advising and  
20 directing. The normal mission is advising, but my mission was  
21 special independent operation to command all indigenous  
22 forces, to include the Vietnamese LLDB, to maintain security  
23 in the district of An Phu, to clear all the VC out of the area  
24 north of Phu Hiep that were in there in strength, and to keep  
25 the border clear.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. Can you show the jury on the map where Phu Hiep is?

2 A. Phu Hiep is right there. It's in the cover of your book.

3 Q. While we're on that, just -- was there a pagoda on the  
4 Cambodian side of Phu Hiep?

5 A. Yes, the pagoda that Lieutenant Strait was always talking  
6 about -- retired major now -- is right in that area now, above  
7 Phu Hiep right inside Cambodia.

8 Q. And was there firing -- was it reported to you that there  
9 was firing by the enemy from the pagoda?

10 A. Yes. Almost all of those reports I got were from John  
11 Strait.

12 Q. And he reported --

13 A. Firing from -- Yes. He very much would like to have  
14 destroyed that pagoda.

15 Q. Now, getting back to your meeting with Colonel Tuttle,  
16 were you also -- was part of your mission to integrate the  
17 forces for a turnover of the camp to the regional forces?

18 A. Yes. Colonel Tuttle explained to me that they had had  
19 three unsuccessful camp conversions in Vietnam, trying to  
20 convert the Special Forces camp to a regional forces camp, to  
21 gradually take the Special Forces out of border surveillance.  
22 He wanted An Phu to be the first successful conversion. And I  
23 can't get into my reputation, but that was part of the reason  
24 why he assigned me that.

25 Q. Well, let me ask you, what -- was there some political

## DANIEL MARVIN - DIRECT EXAMINATION

1 tension between the central government and the An Phu  
2 district, the peoples of the An Phu district?

3 A. Yes. The Hoa Hoas had a -- one of the peculiar nature of  
4 the Hoa Hoas, which is a religious sect of the Buddhist  
5 religion, the finest people I've ever met in my life, 64,000  
6 in my area. But the Hoa Hoas refused to join ARVN army. They  
7 refused to join anything where they were not under the direct  
8 command of another Hoa Hoa. That's why in our camp, all of  
9 the men, all the CIDG and all the officers were Hoa Hoas.  
10 Major Phoi Van Le, who commanded the LLDB, was not a  
11 Vietnamese Special Forces officer, but he was specially  
12 assigned there because he was a Hoa Hoa. Major Le, in fact,  
13 went to Saigon --

14 Q. Let's --

15 A. Oh.

16 Q. So I ask you --

17 A. About the amnesty.

18 Q. What was the tension between the central government and  
19 the Hoa Hoas?

20 A. That was it. The Hoa Hoas, if they were now -- when I  
21 arrived there, if they were to go and become ARVN or RF, they  
22 would have had to go before a military tribunal. Then the  
23 military tribunal, nine chances out of ten, unless they could  
24 prove some medical reason or something, they'd go to jail for  
25 not having joined the ARVN forces. The Hoa Hoas were not

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1 treated good from the religious standpoint either, because the  
2 government was Catholic at that time.

3 Q. Were the Hoa Hoas, did they refuse to be drafted by the --

4 MR. DEEVER: Object to leading, Your Honor.

5 THE COURT: Sustained.

6 BY MR. BACHRACH:

7 Q. Do you know why the Hoa Hoas had issues with the central  
8 government's armed forces?

9 A. The Hoa Hoas had two big issues. One was amnesty, which  
10 they wanted to get, and which we finally did get them, and the  
11 other one was the -- not being able to shoot back at the  
12 enemy, because our president had provided the enemy safe  
13 havens in Cambodia.

14 Colonel Tuttle, during his initial briefing, told me that  
15 Major Phoi Van Le had gone and met with the Minister of  
16 Defense and had actually got permission to fire against the  
17 enemy, no matter where they were, once they got an American  
18 commander in there.

19 Q. And what was the significance of needing amnesty?

20 A. The amnesty was to protect them from any military tribunal  
21 action. Otherwise, when, in effect, we were able to convert  
22 the camp to regional forces, they would be automatically  
23 integrated into regional forces, and there would be no  
24 military tribunal for any of them.

25 Q. So as I understand it, one of your tasks was to convert

## DANIEL MARVIN - DIRECT EXAMINATION

1 the camp so that the Hoa Hoas would integrate with the South  
2 Vietnamese central government army?

3 A. That is correct. And we had the first successful  
4 conversion to regional forces.

5 Q. And as you indicated, three prior attempts had failed.

6 A. That is correct. Not at An Phu, but other places.

7 Q. Now, you indicated that Colonel Tuttle asked you if you'd  
8 take a mission; and how did you respond?

9 A. Yes, sir.

10 Q. And what did -- How did the meeting end?

11 A. Well, the meeting ended with him indicating that any time  
12 that any of our men were caught inside of Cambodia, they would  
13 be dropped as deserters from the United States Army. That I  
14 had to understand that there would be no combat support, once  
15 inside of Cambodia; otherwise, there would be no air support,  
16 no artillery support, and no med evac support when we were  
17 inside of Cambodia. Nor would we have any -- well, in fact,  
18 he told me not to make any reports of any actions that we did  
19 into Cambodia, to include mortar firing, recoilless rifle,  
20 anything that we were to fire, 3.5 rocket launcher or any kind  
21 of ammunition we were to fire into Cambodia, we did not report  
22 it on any of the reports.

23 Q. And you indicated that this was an independent operation  
24 he asked you to volunteer for?

25 A. Yes, in fact --

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. What is an independent operation?

2 A. An independent operation, for example, Colonel Tuttle,  
3 when I left, he said, when you walk out that door, it will be  
4 as if I never met you. We never had this meeting. There is  
5 no special functions going on at An Phu. An independent  
6 operation, once I walked out that door, I had nobody in  
7 command of me.

8 Now, that made it very difficult at the B Team. Because  
9 normally the B Team commander, in that case Colonel Brewer --  
10 started out with Major Williford -- Colonel Brewer commanded  
11 all the A Teams under his jurisdiction, except mine. And he  
12 threatened to court-martial me many times, but Colonel Tuttle  
13 would not allow him to do it, because Colonel Tuttle knew that  
14 I had an independent operation. He even told my wife that  
15 after the war.

16 Q. Now, you accepted the mission, correct?

17 A. Yes, sir.

18 Q. And, now, during that meeting or at any time, did Colonel  
19 Tuttle ever ask you or order you to assassinate Prince  
20 Sihanouk?

21 A. That subject never came up, sir.

22 Q. Did you --

23 A. He did not say anything about it.

24 Q. Did you write in your book in any place that Colonel  
25 Tuttle ordered you to assassinate Prince Sihanouk?



## DANIEL MARVIN - DIRECT EXAMINATION

1 A. No, sir, it would have been a lie.

2 Q. So that's not in your book?

3 A. No, sir.

4 Q. Now, as I -- as we thumb through your book, it's very  
5 detailed. Can you explain for us how you were able to write  
6 such a detailed book on your memoirs?

7 A. Yes, sir. When I left Colonel Tuttle's office -- I'm an  
8 old what they call three-by-five card man. I always have  
9 three-by-five cards with me. When we left that office -- when  
10 I left that office, I determined in my mind that anything that  
11 happened in An Phu would go down on three-by-five cards. And  
12 that any reports that I provided to higher headquarters, to  
13 include MOPSUMS -- monthly operational summaries, situation  
14 reports, spot reports, copies of those would be put in the  
15 mail through my chief interpreter, and go to a friend of  
16 mine -- thank God I had a good friend in Fort Bragg, North  
17 Carolina -- and he would keep all of that in sealed envelopes  
18 until I asked for them. And the whole reason for that was if  
19 anything were to happen to me, there was an attorney who was  
20 loyal to us, who he would take them to, to protect me against  
21 the United States Government.

22 Q. And so you had three-by-five cards that you took --

23 A. Yep.

24 Q. -- detailed notes on?

25 A. Yes, sir.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. And did you use those in writing the book?

2 A. Yes, sir. Once I decided to write it nonfiction, then I  
3 sent to this gentleman and I got everything that I had, and  
4 then I did a chronology from that, because everything was  
5 dated. And I ended up with kind of a diary like, which was  
6 very boring to most people.

7 Q. But so what did you do, you wrote the information from the  
8 cards in a chronological order?

9 A. Right, on a lined pad, then I threw the cards away.

10 Q. Why did you throw --

11 A. Actually I burned them up.

12 Q. Why did you do that at that time?

13 A. Didn't need them anymore.

14 Q. But did you save any of the other documents?

15 A. I saved most of the SITREPS, SPOTREPs and monthly  
16 operational summaries, some of which you have.

17 Q. I'm showing you a document. Do you recognize that  
18 document?

19 A. Yes, sir, that's the monthly operational summary for the  
20 month of May 1966.

21 Q. Did you prepare that document?

22 A. I typed it personally.

23 Q. When did you type it?

24 A. In first day of June 1966.

25 Q. And did you do that in the regular course of your business

## DANIEL MARVIN - DIRECT EXAMINATION

1 As a --

2 A. It was a requirement.

3 Q. And you did it at or near the time of --

4 A. I did it on the first day of June. First day of June  
5 1966.

6 Q. And this was part of your duties to prepare this report?

7 A. Commanding officer of all A Teams, yes, sir.

8 MR. BACHRACH: I'd like to introduce this document  
9 into evidence.

10 THE COURT: Any objection?

11 MR. BEN DEEVER: Your Honor, can we take just a quick  
12 moment to review it, please, sir?

13 MR. DEEVER: Your Honor, I would like to voir dire  
14 him, if I could, on this document before it's -- before we --  
15 before it's introduced.

16 THE COURT: Okay. Go ahead.

17 VOIR DIRE

18 BY MR. DEEVER:

19 Q. Mr. Marvin, you say that you prepared this document on  
20 June the 1st?

21 A. Yes, sir.

22 Q. 1966?

23 A. Yes, sir.

24 Q. Where did you prepare it?

25 A. In my office in camp An Phu. On a typewriter.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. On a what?

2 A. Typewriter.

3 Q. It was a manual typewriter?

4 A. Manual typewriter, yes, sir. I think it was a Smith  
5 Corona.

6 Q. Where did you --

7 A. Please be careful with that.

8 Q. -- learn to type this way?

9 A. Learned to type that way? As a sergeant. In logistics,  
10 you have to know how to type.

11 Q. This document does not have one typographical error in it  
12 or one erasure, does it?

13 A. I don't know.

14 Q. Well, let's look at it.

15 A. I'm happy, if it doesn't.

16 Q. I'm surprised if it does, but you can look at it.

17 A. Is that a part of the examination? For me to look at  
18 this?

19 Q. I'm asking you to identify this document a little bit  
20 more.

21 A. This is the one that I typed personally in my office, with  
22 all the attachments, exhibits and everything else, with  
23 information that I received from my team and from Major Phoi  
24 Van Le, based on the actual statistics of everything except  
25 the top secret operations.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. Who did you send it to?

2 A. B Team and the C Team, says right on it.

3 Q. Did you make carbon copies?

4 A. This is one -- this is one of the carbon copies right  
5 here. You can see that it's a carbon copy.

6 Q. It's the original, isn't it?

7 A. No, sir, the original went to the headquarters. That  
8 would be on plain paper; you know that.

9 Q. This typewriter was not electric, was it?

10 A. No, sir.

11 THE COURT: Wait a minute.

12 MR. BACHRACH: Objection, Your Honor.

13 THE COURT: This has nothing to do with the  
14 admissibility. It may go to the weight of the evidence on  
15 cross-examination, but we're trying to get this into evidence,  
16 and not -- so --

17 BY MR. DEEVER:

18 Q. That is not an original document then?

19 A. No, sir, I never said it was. It's a carbon copy that was  
20 typed at exactly the same moment, every single thing on it, as  
21 the original.

22 MR. DEEVER: Thank you.

23 A. You're welcome, sir.

24 THE COURT: All right. Into evidence.

25 (Defendants' Exhibit 42 received.)

## DANIEL MARVIN - DIRECT EXAMINATION

1 BY MR. BACHRACH:

2 Q. Showing you Exhibit 42, this is an example of a monthly  
3 operation report?

4 A. Yes, sir.

5 Q. And while we're on this, I'll get into the battle of Khanh  
6 Bin, since this was dated June 1, 1966?

7 A. Yes, sir.

8 Q. Okay. And did this report on the battle at Khanh Bin?

9 A. Yes, sir. In fact, that's one of the instances where I  
10 had date time groups by the majority of the actions up at  
11 Khanh Bin, as it was a significant battle. Actually it's the  
12 largest battle fought by Special Forces camps up to that time.

13 Q. How many days was the battle?

14 A. Five continuous days.

15 Q. How did -- how did you -- when did you first learn about  
16 the battle?

17 A. When the first rockets and machine gun fire came across  
18 the border into our area.

19 Q. When did that take place?

20 A. At 0340 hours, I believe it was, on the 19th day of May,  
21 Ho Chi Minh's birthday.

22 Q. Now, did you make any preparations in advance of this --  
23 Strike that.

24 Were there preparations going on by you at camp in advance  
25 of Ho Chi Minh's birthday?

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1 A. Yes, sir. In fact, it shows in here in enclosure two, in  
2 the very bottom line, the night ambush force, which is the one  
3 that Lieutenant Strait headed up, with two U.S.A. SF, one  
4 LLDB, one platoon CIDG, and a platoon of PF ambushed a  
5 demolition squad at the bridge site. Fire fight lasted 20  
6 minutes. That was the big thing that we did was I sent  
7 Lieutenant Strait up there, with that force, to protect that  
8 bridge, because we would have to cross that bridge.

9 If you look at the map here --

10 Q. Can you show where the bridge is?

11 A. Yes, sir. The bridge is right there.

12 Q. And where was your camp again?

13 A. The camp is down here.

14 Q. And where is Khanh Bin?

15 A. The battle area was up into this area. And in order to  
16 get there with a relief force, we had to get across that  
17 bridge. Because, you see, that lake there and the river here  
18 precluded us with vehicles going anyplace but across that  
19 bridge.

20 Q. So when did you -- when did the night ambush force go out?

21 A. It went out at 1730 hours, which would be 5:30 in the  
22 afternoon, the day before Ho Chi Minh's birthday. Our  
23 intelligence, and we had good intelligence, all of our entire  
24 agent net was female. And our intelligence was outstanding.

25 Q. And you received -- What did you receive from intelligence

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1 at that time?

2 A. That we were going to have -- there was going to be an  
3 attack on An Phu on Ho Chi Minh's birthday by a force of about  
4 2400 Viet Cong of the Southward Regiment.

5 Q. Had anything been reported to you to support that there  
6 was a plan -- some sort of planned attack?

7 A. Yes, sir. Let me see if I have it in here. I don't want  
8 to take the time. It's in one of the monthly operational  
9 summaries, where the VC high command had ordered 500 caskets  
10 to be built and to be prepositioned on the other side of the  
11 border inside of Cambodia, to support taking care of the  
12 losses that they anticipated in that battle.

13 Q. After -- You sent Sergeant Johnson and who else on the  
14 night ambush? Do you recall?

15 A. It was Lieutenant Strait.

16 Q. I mean, excuse me, Lieutenant Strait.

17 A. I'd honestly have to ask him now. This just shows two  
18 USSF. Doesn't show -- and also interpreter, which was Tony.

19 Q. And did Mr. -- did Sergeant -- then Sergeant Taylor,  
20 engage in the battle at Khanh Bin?

21 A. Oh, absolutely. In Khanh Bin, but not at the ambush site  
22 here.

23 Q. What did Sergeant Taylor, what involvement did he have?

24 A. Well, when we -- the VC had encircled our FOB up at Khanh  
25 Bin. They had a large force. And we went up there to



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1 penetrate the VC encirclement. And Major Phoi and I got  
2 together and decided that we'd like to have a diversionary  
3 attack. Sergeant Taylor volunteered, along with Tony Trung,  
4 to lead that force, a very small force, but to make the VC  
5 think it was a larger force. And to draw enough of them off.  
6 So with the fire power we had, that we could then break the  
7 encirclement and take back over the entire Khanh Bin FOB.

8 Q. Do you recall whereabouts he was positioned at the time  
9 that he engaged in the diversionary tactic?

10 A. Yes, sir, right about there.

11 Q. And where did they -- where did -- what did they do to  
12 divert the enemy?

13 A. They just drew them away from where our main relief force  
14 was coming in. We were coming in from this way. They  
15 diverted some of the enemy back away from there, so that we  
16 could reach the trenches and secure the FOB. And they did a  
17 wonderful job. In fact, I put Sergeant Taylor in for a Silver  
18 Star for the action, and it was refused because they said that  
19 we did not exist.

20 Q. Now, when you -- you've heard the tapes of Lieutenant  
21 Strait. And he claimed you saved his life. Did that occur?

22 A. Yes, sir. I had forgotten all about it until he sent the  
23 tape. And I really appreciated getting the audio tapes from  
24 these men to not only support, but to add to the book. And  
25 almost everything that they provided on those audio tapes is

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1 in this book.

2 Q. Describe what happened when you took action and saved  
3 Lieutenant Strait's life.

4 A. Well, we had arrived into Khanh Bin, and taken back the  
5 FOB. And Lieutenant Strait was a good man on the radio, and  
6 he was radioing back and forth between him and the Air Force  
7 units supporting us. And about that time I heard a mortar  
8 round arcing over our area towards us. And I reached up and  
9 grabbed him and pulled him into the trench that I was in. He  
10 reminded me of it in the audio tape. I believe it to be the  
11 truth because he said it in the audio tape. I don't know why  
12 he's laughing right now, but that's --

13 Q. Well, just pay attention to us --

14 A. Yes, sir.

15 Q. -- and the jury.

16 A. Yes, sir.

17 Q. Please don't pay attention to the crowd.

18 A. Yes, sir.

19 Q. Now, was your time in the An Phu district a resort?

20 A. Far from it, sir.

21 Q. How would you describe it?

22 A. I would describe it as probably the finest Special Forces  
23 unconventional operation in Vietnam at the time, at least any  
24 that I was aware of. My two sergeants and the medics took  
25 care of 64,000 people in that area, as best they could. Built

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1 maternity houses, trained midwives, to daily medical patrols,  
2 we built schools. Whenever they destroyed it, we'd start  
3 building that sucker right back up again the next day.

4 Q. But my question was --

5 A. We had the most secure border.

6 Q. You have to listen to my question.

7 A. Okay.

8 Q. My question was, it wasn't a resort?

9 A. No, sir.

10 Q. Was there enemy activity?

11 A. Plenty of it, yes, sir.

12 Q. And --

13 A. There was sometimes, you know, when there wasn't, because  
14 they had to withdraw and regroup and plan another attack.

15 Q. When was most of the activity?

16 A. May of 1966.

17 Q. And was it at night or during the day?

18 A. It was during mostly during the night, but it continued  
19 during that period of time, just about 24 hours a day.

20 Q. During the Khanh Bin battle?

21 A. That's right, sir.

22 Q. But other than the Khanh Bin battle, was most of the  
23 activity at night or during the day?

24 A. Nighttime, sir.

25 Q. And so during the day the camp and the surrounding areas

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1 were -- there was not too much -- there was no real fire  
2 fighting?

3 A. Very little. In fact, during the daytime, like I think it  
4 was Sirois that said he went downtown and he didn't need a  
5 guard. We didn't. Just take your sidearm with you. Medics  
6 usually just carried a pistol. I'd go down there and get a  
7 haircut the same place he did.

8 Q. Now, in your book, is the enemy activity in the fire  
9 fights, is that true?

10 A. Everything that's in the book, to the best of my knowledge  
11 and belief, is true.

12 Q. About the fire fighting?

13 A. Yes, sir. It was significant enough in May that the Joint  
14 Chiefs of Staff included it -- just as the Joint Chiefs of  
15 Staff, that's as high as you can get -- in a special report  
16 showing the excellence of our intelligence net --

17 MR. DEAVER: Object, Your Honor.

18 THE COURT: Sustained.

19 BY MR. BACHRACH:

20 Q. Were you referring to the document that Mr. Millegan  
21 discussed, lessons learned?

22 A. Yes, sir.

23 Q. And let me get back here. With respect to the book that  
24 you've written --

25 A. Yes, sir.

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1 Q. You stand by and it's true, the fire fighting and actions  
2 that took place in that book?

3 A. Yes, sir, even to the extent of standing by everything  
4 that's in this book that the plaintiffs provided me, because I  
5 felt they were providing me the truth at the time.

6 Q. Did you have -- did they ever tell you that they weren't  
7 providing you untrue information?

8 A. They always submitted it as truth.

9 Q. Let me just, since you brought that up, let me go into  
10 that area and finish it. You, at some point, decided to  
11 draft -- write a nonfiction book.

12 A. That is correct. Just after I got saved. Right.

13 Q. And when was that?

14 A. It was the 29th day of January 1984.

15 Q. And what was the first manuscript that you drafted?

16 A. It was actually a compilation of the information on my  
17 three-by-five cards and the MOPSUMS and that, and it was kind  
18 of like a diary. And I wrote that up as a diary. But when I  
19 showed it to Bob Doherty, he thought it just wouldn't sell.

20 Q. So you decided -- What did you do after that?

21 A. Then I changed it into this type of a book, only it didn't  
22 really refine it until a lady named Jeanne Calabretta, who is  
23 shown in here, helped me to reformat the book so that we had a  
24 Bible verse at the top of every chapter, and that there was an  
25 introductory portion in the front of each chapter that was

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1 contained someplace else in that chapter in the book.

2 Q. What year was that?

3 A. That was in 1988.

4 Q. Now, that was before or after you had communications with  
5 various plaintiffs concerning the book?

6 A. It was prior to, because it was in May of 1988 that I sent  
7 the first manuscripts to these gentlemen.

8 Q. Who did you send manuscripts to?

9 A. Sirois, Taylor and Strait.

10 Q. Now, had you previously sent out questionnaires?

11 A. I'm not sure that that wasn't at the same time. I just  
12 wanted to get some background of them to put in the final  
13 book. And I wanted to know what kind of a family background  
14 they came from, whether they were fighters. I thought it  
15 would be interesting for readers of the book to know, you  
16 know, how many of us -- I mean, I was a fighter in Chicago --  
17 how many of the Green Berets came from a background of  
18 toughness, or how many came from a background -- there weren't  
19 many Mr. Milquetoasts in the Green Berets.

20 Q. Now, could you repeat for me again, to whom did you send  
21 drafts in or about May of 1988?

22 A. That was retired Major John Strait, retired Sergeant Major  
23 Sirois and retired Sergeant Major Taylor.

24 Q. Did the manuscripts that you sent them indicate whether  
25 the book was fiction or nonfiction?

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1 A. Nonfiction in all cases.

2 Q. And that was clearly on the manuscript?

3 A. Yes, sir.

4 Q. Did you have communications with any of them thereafter?

5 A. Yes, sir.

6 Q. And in fact --

7 A. I would say with the exception of Sergeant Taylor, he sent  
8 back the questionnaire, but I never got any input from him for  
9 the manuscript, which surprised me.

10 Q. You had sent him a manuscript -- directing your attention  
11 to -- I'm sorry. Directing your attention to Defendants'  
12 Exhibit 7, it indicates that you sent, on June 17th, 1989, a  
13 draft to Jim Taylor. Could you publish for the jury what you  
14 wrote?

15 A. Yes, sir. This date is 17 June '89. And this was the  
16 manuscript that was prepared after the convention in 1988.  
17 And I said, Jim Taylor: You are a big part of this story and  
18 I'm sure proud to know you, your camrade in arms, Dangerous  
19 Dan. The title of the book is the Bassac Bastards, the True  
20 Story about U.S. Army Special Forces Detachment A-424.

21 The Bassac Bastards are what we called ourselves as a  
22 team. We were on the Bassac River, and it was the name that  
23 kind of had a nice little ring to it, like a football team.

24 Q. Now, you received two tapes back from Lieutenant Strait.

25 A. Yes, sir.

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1 Q. And had you told him at all, before you got the tapes,  
2 that you were writing a novel?

3 A. I have never mentioned to any of my men at any time that I  
4 was writing a novel.

5 Q. Did you ever tell them you were writing fiction?

6 A. No, sir. Not any of them.

7 Q. Did you tell them it was going to be a true book?

8 A. Yes, sir. Well, I always said nonfiction, or true, one or  
9 the other, yeah. True story or nonfiction.

10 Q. And, in fact, Lieutenant Strait sent you a tape in which  
11 he sent you what he remembered in his impressions of An Phu.

12 A. That is correct. And it was very helpful to me. And just  
13 nice to hear from my men.

14 Q. And he told you to use his name in the book?

15 A. Yes, sir.

16 Q. And did you use information that he provided to you in the  
17 book?

18 A. I would say virtually 95 percent of what he provided, is  
19 in the book.

20 Q. Did you have any reason to doubt his credibility when he  
21 provided you that tape?

22 A. Not at all. These gentlemen were the finest team an  
23 officer could have under him, especially in a combat  
24 situation.

25 Q. Did he tell you at any time that he was supposedly drunk



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1     when he made the tape?

2     A.   No, sir.

3     Q.   Did he tell you at any time he was fabricating when he  
4     made the tape?

5     A.   No, sir.

6     Q.   Did he ever tell you that anything in the tape, before the  
7     lawsuit, was untrue?

8     A.   No, sir.

9     Q.   And you received a tape from Mr. Sirois.

10    A.   Yes, sir, two tapes.

11    Q.   One is in evidence.

12    A.   Yes, sir.

13    Q.   And, now, when you received that tape from Mr. Sirois, did  
14    he ever tell you anything was untrue about it?

15    A.   No, sir. He was -- in fact, he was a command sergeant  
16    major in active duty United States Army. I mean, a Green  
17    Beret, if you couldn't trust that, I don't know what you could  
18    trust.

19    Q.   In fact, he told you to insert his memories in your book,  
20    correct?

21    A.   Yes, sir.

22    Q.   And did you insert his memories in your book?

23    A.   I'd say 95 percent of them, yes, sir.

24    Q.   And you relied on what these men told you, to make sure  
25    that the book was accurate.

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1 A. Yes, sir.

2 Q. And Raymond Johnson had a telephone call with you,  
3 correct?

4 A. Yes, sir.

5 Q. And you taped that call?

6 A. Yes, sir.

7 Q. And he didn't tell you that anything in that phone call  
8 that he was telling you a story or making something up?

9 A. No, sir. In fact, he was glad I was taping the call,  
10 because he didn't want to write all that.

11 Q. He sounded excited to speak to you.

12 A. We were both excited. We were friends at that time.

13 Q. And Lieutenant Strait sounded excited to hear from you.

14 A. And we were friends, too, sir.

15 Q. And Mr. Sirois sounded very excited to provide you  
16 information.

17 A. Yes, sir. I thought we were friends, too.

18 Q. And Mr. Johnson told you about a mission he went on in  
19 Cambodia over the phone, correct?

20 A. That is correct.

21 Q. Did you have any reason to doubt that he was telling you  
22 the truth?

23 A. No, sir, not whatsoever.

24 Q. He didn't say, hey -- did any of these plaintiffs, when  
25 they provided you a tape, hey, here's something great to add

## DANIEL MARVIN - DIRECT EXAMINATION

1 to a story? Here, this will make a great --

2 A. More or less they sent it as -- to help me to recall other  
3 things that went on in An Phu, so it would be a good book.

4 Q. Recalling their memories?

5 A. Yes, sir.

6 Q. And they sent you those to rely on so you could have a  
7 good accurate book?

8 A. Yes, sir.

9 Q. And that's what you did, didn't you?

10 A. Yes, sir.

11 Q. Now, directing your attention to after the battle at Khanh  
12 Bin, you discuss in the book being approached by a CIA agent.

13 A. Yes, sir.

14 Q. Could you discuss -- describe for us what occurred? Well,  
15 let me break it down so it's easier for the jury. At some  
16 point were you made aware that a CIA person was going to come?

17 A. Yes, we got a radio message from the B Team saying that a  
18 company man would arrive on an Air America chopper.

19 Q. And what's an Air America chopper?

20 A. It was a beautiful thing in those days, because it was the  
21 one -- it's a chopper owned and operated by the Central  
22 Intelligence Agency. And it was the one that I could call on  
23 to go across the border for surveillance operations, where  
24 ours would not.

25 Q. And at some point an Air America chopper arrived?

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1 A. Yes, sir.

2 Q. And did you inform your men that you were meeting with  
3 someone from the CIA that day? At the time it was happening?

4 A. At the time it was happening, most of them knew.

5 Lieutenant Strait was told to take charge of the escort, the  
6 girl that Walter Mackem brought with him to the camp. Walter  
7 Mackem and I went directly up on the top of the communications  
8 bunker on the part that's called the command bunker.

9 Q. Let me stop you there.

10 A. All right.

11 Q. Only you and Mr. Mackem met, correct?

12 A. And Major Phoi Van Le, sir.

13 Q. Major Phoi Van Le was there also?

14 A. Yes, sir.

15 Q. And the woman, did you know who she was?

16 A. No, I do not. She claimed to be a reporter. At least he  
17 introduced her as a reporter.

18 Q. Did you allow reporters into your camp?

19 A. Not American, no.

20 Q. Why?

21 A. I didn't trust them. I trusted the Vietnamese. We were  
22 there to help them. I trusted them. They trusted me.

23 Q. So this -- and did Mr. Mackem introduce the woman as --  
24 How did he introduce her; just as a reporter?

25 A. Yes, sir.

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1 Q. Now, you've heard on --

2 A. Not by name though.

3 Q. And you heard on Mr. Strait's tape, when you got it back,  
4 he confirmed your story that you wrote that a woman and a man  
5 met you at the camp that day?

6 A. Yes, sir.

7 Q. And he confirmed, did he not, that the woman -- it seemed  
8 to be a flimsy cover.

9 A. Yes, sir.

10 Q. And he said that in his tape.

11 A. That's correct, sir.

12 Q. And you received that tape.

13 A. Yes, sir.

14 Q. And that confirmed for you more even so that what you were  
15 writing was true.

16 A. Absolutely. In fact, every part of every tape that I had  
17 previous personal knowledge of, it just reinforced the rest of  
18 the tape to me as being true.

19 Q. And you met -- you and Major Le Van Phoi -- did I  
20 pronounce that?

21 A. Phoi Van Lee.

22 Q. Phoi Van Le, sorry. Met at the top of the command  
23 bunker --

24 MR. DEEVER: Object to leading, Your Honor.

25 MR. BACHRACH: I'm just -- Okay. I'll rephrase it.

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1 THE COURT: I was going to overrule the objection  
2 because you were just restating what he said and setting the  
3 scene, so go ahead.

4 MR. BACHRACH: Okay.

5 BY MR. BACHRACH:

6 Q. You met on top of the bunker.

7 A. Yes.

8 Q. With Mr. Mackem?

9 A. On the command platform part, right.

10 Q. And what occurred during that time?

11 A. Walter Mackem asked me if I would volunteer. And it's  
12 important that you know that all covert operations, an officer  
13 must volunteer for. They cannot order you.

14 Q. Explain that.

15 A. Right.

16 Q. Explain what you mean by that. What --

17 A. Right. There are no orders, there's no official writings,  
18 there's no -- no evidence of any kind in a covert operation,  
19 because then it can be hidden from public scrutiny or from the  
20 Government getting in serious legal trouble with it. So you  
21 always volunteer for any kind of an operation like that.

22 Q. So --

23 A. And he asked me if I would volunteer to put together a  
24 group of our own mercenaries, our CIDG -- and they were  
25 mercenaries, really -- they were the finest people I ever met,

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1 but they could quit any time they wanted to, for example, they  
2 weren't in the armed forces. All they had to do was leave  
3 their weapon behind.

4 Q. They were Hoa Hoas?

5 A. They were all 100 percent Hoa Hoas. And he asked me if I  
6 would put together a mission that would go into Cambodia at a  
7 very specific time, when Prince Sihanouk would be going up to  
8 visit a temple, something that he did every year at that time.  
9 And he brought with him on the next visit, after I had  
10 accepted the mission, to make it -- to do it and to make it  
11 look like it had been done by the North Vietnamese or the Viet  
12 Cong.

13 Q. Now, you indicated you accepted the mission?

14 A. Yes, sir.

15 Q. Then what happened?

16 A. I accepted it with a quid pro quo. I demanded that --  
17 it's nice to have an independent operation, because you can  
18 demand a lot of stuff. But I think you would have demanded  
19 exactly the same thing. I demanded that the president of the  
20 United States inform the American people that he was from  
21 thence forth denying the enemy sanctuary, safe havens inside  
22 Cambodia, and denying them the use of the Mekong River as  
23 their main resupply route, that we protected, to take arms and  
24 ammunition into Cambodia, to then fire back and kill our  
25 people with.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. Well, explain -- And what did Mr. Mackem say?

2 A. He said he accepted that, he'd take that to the White  
3 House, you know.

4 Q. And then what happened?

5 A. Well, my men, Lieutenant Strait specifically, and Sergeant  
6 Taylor, were instructed to train the Vietnamese. We had 42  
7 volunteers -- actually, we had 100 volunteers and we selected  
8 42 of them to go on a suicide mission, basically. Only we  
9 always felt, and we embraced they could make it back. And I  
10 honestly -- they were good, as John Strait mentioned in his  
11 tape, they were outstanding fighters.

12 I -- my men were then told to train them, but never told  
13 that the mission was to assassinate the head of a foreign  
14 country. Major Phoi and I both understood that in your  
15 relationship with the Central Intelligence Agency, you release  
16 as little bit of information as you can, of a classified  
17 nature, to the men who are going to perform the mission, until  
18 the last minute, as required for them to know.

19 Well, my men would really never have to know, because none  
20 of them would be going on the mission itself. We had -- well  
21 I won't go into any more detail.

22 Q. Let me break it up in questions so that it --

23 A. Yes, sir.

24 Q. At some point did an issue arise where you then rejected  
25 the order? The request?



## DANIEL MARVIN - DIRECT EXAMINATION

1 A. Yes, sir, we started the training. And the CIA agent,  
2 Walter Mackem, was supposed to come back to the camp with  
3 notification that the quid pro quo had been recognized and  
4 taken care of. And I had a friend in Fort Bragg, North  
5 Carolina, who was going to listen to the radio and also watch  
6 the New York Times. In those days, believe it or not, we  
7 trusted the New York Times, to see an article in there, that  
8 the President had done just as I demanded, to get -- to take  
9 away the aiding and abetting of the enemy.

10 The CIA agent, Walter Mackem, offered to bring me proof  
11 that he had done it. But they would have just printed their  
12 own paper, I figure.

13 Q. Did he bring you proof?

14 A. No, sir.

15 Q. What happened?

16 A. I ran him out of the camp. I canceled the mission, I  
17 ordered him out of the camp, told Lieutenant Strait to escort  
18 him to his chopper. And on the way to his chopper he turned  
19 around and said, Captain, you can't do that to the company  
20 because you can't win.

21 Q. And everything you have said that you've written in the  
22 book about that incident, is true.

23 A. Absolutely. Yes, sir.

24 Q. And nowhere in the book did you ever tell -- Did you ever  
25 tell your men about the mission to assassinate Prince

## DANIEL MARVIN - DIRECT EXAMINATION

1 Sihanouk?

2 A. No, sir.

3 Q. Did you at some point tell them there may be repercussions  
4 because -- did you ever tell them anything about repercussions  
5 as a result of refusing the CIA request?

6 A. Well, Lieutenant Strait, for one, heard the CIA agent, as  
7 he was leaving the camp, say, You can't fight the company,  
8 Captain, because you can't win.

9 Q. No, but --

10 A. They knew there was a problem. And there shouldn't be any  
11 problems between the CIA and you; they don't like to have such  
12 a thing.

13 Q. But did you ever write in the book, or -- that you told  
14 the plaintiffs what the subject of the mission was going to  
15 be?

16 A. No, sir. No place. Not even when the ARVN regiment was  
17 coming after us.

18 Q. What did you tell them, at most, about the mission?

19 A. Just that I had refused, personally canceled a CIA  
20 mission. I don't know exactly how it's worded in there,  
21 right -- sitting there. And that they weren't happy with it.  
22 And we could possibly have repercussions.

23 Q. This was after the Khanh Bin victory celebration, correct?

24 A. Yes, sir.

25 Q. And that was on June 4th, 1966?

## DANIEL MARVIN - DIRECT EXAMINATION

1 A. Yes, sir. I think this was the 6th day of June he came to  
2 my camp. Somewhere around there.

3 Q. And do you recall what day he left your camp?

4 A. He left the same day. Every time.

5 Q. How many times did he come to your camp?

6 A. Three times total. First time to ask me if I'd accept the  
7 mission, second time to bring the plans, the maps that the CIA  
8 had drawn out, and to ask me, you know, what route that we  
9 would use to bring the men back into the country. And I  
10 refused to tell them, because I figured they'd have another  
11 camp set up an ambush and get my men so they had no witnesses.

12 Q. Are the maps in the book, the -- are there --

13 A. Yes, there's a map in the book titled Operation Snuff  
14 Crown.

15 Q. Could you point that out to the jury?

16 A. Yes, on page 269. Special operations map No. 7.

17 Q. Who prepared that map?

18 A. I did, sir.

19 Q. Based on what?

20 A. My plans. They was not shared with anyone except Major  
21 Phoi Van Le and the Walter Mackem from the CIA.

22 Q. When was the last -- Do you recall what date you kicked  
23 Mr. Mackem out of your camp?

24 A. Bear with me just a minute. It's on page 274, but I  
25 haven't found the date yet. The 14th day of June.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. And now, shortly thereafter, a few days thereafter,  
2 directing your attention to page 277?

3 A. Yes, sir.

4 Q. There was a message that was brought to you.

5 A. Yes.

6 Q. And is that the first message that was brought to you on  
7 the subject of your leaving the camp?

8 A. Actually, the subject was not anything about leaving the  
9 camp in the message that's on that page, but it was based on  
10 it. It was group headquarters received priority message from  
11 LLDB, that Ky has -- that's the Premier of South Vietnam --  
12 had withdrawn the amnesty from the CIDG, my forces, at An Phu.  
13 And that all will go before a military tribunal, after  
14 conversion to regional forces. And I kind of explained that  
15 to you earlier.

16 Q. Okay. And then you put, signed Tuttle. Was the actual  
17 transmission, did it have signed by someone?

18 A. No, they're on one-time pads. I put names in the book so  
19 people would understand who was talking to who. On the  
20 one-time pads it would just show a number for our camp and a  
21 number for the headquarters, two- or three-digit number, I  
22 don't remember which. The commo men did all this.

23 Q. Now, you've heard --

24 A. But what it says is that this came from me to him.

25 Q. Yeah. From him to you?

## DANIEL MARVIN - DIRECT EXAMINATION

1 A. From him to me, excuse me.

2 Q. And you heard Colonel Tuttle's testimony that he wasn't  
3 there at that time. Did you know whether he was or wasn't?

4 A. He claims he wasn't there at this time, and I believe him.  
5 All I know is that this was sent to the commanding officer of  
6 the -- from the commanding officer of the C Team, whoever that  
7 may be. He said in -- on his testimony, that it was a  
8 Lieutenant Colonel Peters. So I assume the message actually  
9 came from Lieutenant Colonel Peters.

10 Q. So you do admit that your adding the name Tuttle was  
11 incorrect?

12 A. That is correct, it was incorrect.

13 Q. Is there anything else incorrect about that message?

14 A. Well, the Marvin shouldn't have been in there either.

15 Q. Okay. Is there anything else incorrect?

16 A. To the best of my knowledge, no.

17 Q. Now, when you got that, and learned that Premier Ky had  
18 withdrawn amnesty from the CIDG of An Phu, what did that mean  
19 to the Hoa Hoa CIDG?

20 A. That -- what that meant to them is that they were to stay  
21 there until the conversion, that they would be put before a  
22 military tribunal unless old Dangerous Dan did something about  
23 it. And Major Phoi Van Le. And as you'll read in the book,  
24 we had about 200 of the Strikers leave us because of that, 200  
25 out of 792. They -- there's no punishment for leaving us, at

## DANIEL MARVIN - DIRECT EXAMINATION

1 all.

2 Q. But the central government had now withdrawn amnesty --

3 A. The Premier, yes, sir.

4 Q. -- and the Hoa Hoas were in danger?

5 A. Yes, sir. All the Hoa Hoas. Premiere Ky was very close  
6 to the CIA.

7 Q. Now, at the time you received this message in the camp,  
8 was Raymond Johnson in camp?

9 A. No, sir.

10 Q. Where was Raymond Johnson?

11 A. He was on a commissary run to Saigon.

12 Q. So he wasn't present?

13 A. That's correct.

14 Q. Was Mr. Sirois present at the time that this message came?

15 A. No, sir.

16 Q. Where was Mr. Sirois?

17 A. He was in a hospital in Saigon.

18 Q. Was Mr. Kuchen present?

19 A. No, sir, he left a long time before that.

20 Q. Just Mr. Strait and Mr. Taylor were there?

21 A. That's correct, sir.

22 Q. What you've written, from page 277, concerning the receipt  
23 of messages -- Let me ask this. You received these messages,  
24 and you were ultimately ordered to report to B Team.

25 A. Yes, sir, by the CO of C-4.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. And did it concern you that you were being ordered to  
2 report to B Team?

3 A. Yes, sir.

4 Q. Why?

5 A. Well, two reasons. Number one, if we were to leave An  
6 Phu, then we would leave our mission. We would betray the  
7 trust of the South Vietnamese, or the Buddhist Hoa Hoas that  
8 were there to lead and guide and direct and pay and everything  
9 else. We would actually abandon our mission. And secondly,  
10 he didn't have a right to give me any order, because I was an  
11 independent operation.

12 Q. Who paid the CIDG?

13 A. CIA. Funds all came from the CIA. For all the operations  
14 within the camp.

15 Q. Why did the CIA pay the Hoa Hoa soldiers?

16 A. Well, oddly enough, there was an operation called Switch  
17 Back Parasol, where the CIDG, where all operations  
18 military-wise were supposed to go out from under the CIA.  
19 They still maintained them, but pretended like it was under  
20 strictly army control, but all the money came from the CIA.

21 Q. And at some point did you learn that an ARVN regiment was  
22 coming south toward the camp?

23 A. Yes, sir, we got a report from an agent that an ARVN  
24 regiment from the 9th Division was heading up the river to  
25 Chau Doc, and they did end up coming there and remaining

## DANIEL MARVIN - DIRECT EXAMINATION

1 overnight in Chau Doc in preparation for an attack on our  
2 camp.

3 Q. Was it -- Did the ARVN regiments typically operate in An  
4 Phu?

5 A. They -- no, sir. They operated within the province,  
6 because they needed them in those areas where there were no  
7 Green Berets or CIDG.

8 When we needed support, we did not go to ARVN, except  
9 their 155 battery, which was under district control. We went  
10 to the Mike Force. And we actually obtained direct commanded  
11 units of indigenous personnel from the Mike Force.

12 Q. And when the camp was being transferred over from CIDG,  
13 the popular forces, to the regional forces, was that being  
14 turned over to ARVN?

15 A. Negative. That was -- excuse me -- that was being turned  
16 over to regional forces, under the command and control of the  
17 district chief.

18 Q. Which meant if -- What did that mean? That meant that it  
19 was going to be turned over so that the central government and  
20 the Hoa Hoas were working together?

21 A. That is correct. Strictly political framework there where  
22 the ARVN division, and all of the regiments, were under direct  
23 command of Commanding General Quan Van Dang.

24 Q. So getting back to the situation you had present, and you  
25 heard Lieutenant Strait on the tape indicate that he was aware



## DANIEL MARVIN - DIRECT EXAMINATION

1 that the 9th regiment was coming. Correct?

2 A. Yes, sir.

3 Q. And you heard him on that tape, just going back to with  
4 respect to the Prince Sihanouk matter, he said, I don't know  
5 about your mission, but I'll support you.

6 A. That's right. Basically he told me on the phone, he says,  
7 anything that you say, I will believe to be the truth.

8 Q. And so you had the discussion with -- you had an order.

9 A. Yes, sir.

10 Q. And --

11 A. An illegal order.

12 Q. And why did you consider it illegal?

13 A. Because I had an independent operation, and I could not  
14 receive any orders until I was released from the independent  
15 operation back under the control of the B Team, and then the  
16 orders would have to come from the B Team commander.

17 Q. Were you also concerned by the order to report, about what  
18 would happen to the Hoa Hoas?

19 A. Oh, that was my primary concern. I did not want to  
20 abandon our mission. They had 100 percent trust in me and  
21 those men sitting right there, and we had trust in them. You  
22 know, one of the very few places in the world, I think, where  
23 we had 64,000 Hoa Hoas, and we had 64,000 people we could  
24 depend on to tell us if the enemy was anyplace in their area.

25 Q. And how did you decide to handle the situation with your

## DANIEL MARVIN - DIRECT EXAMINATION

1 men to try to protect them?

2 A. I told them all about the order from the commanding  
3 officer of the C Team, that we were to report to the B Team.  
4 In effect, we would be deserting our mission and our charge to  
5 the Hoa Hoas. I told them they could leave right away, based  
6 on that order, as long as they would leave so the boats could  
7 be back before dark. And I told them if they wanted to stay,  
8 that I would then order them to stay. So in order to leave  
9 after that, they'd be disobeying the direct order of their  
10 superior officer.

11 Q. What did they decide to do?

12 A. They all, to a man, decided to stay. Because they loved  
13 the Hoa Hoas.

14 Q. The plaintiffs, we're talking about just Taylor and  
15 Strait.

16 A. All that were there. Now all -- the plaintiffs, there was  
17 only two. But of all the men there were there, we still had a  
18 team. They all decided to stay.

19 Q. But none of the other sued you that were there, just  
20 Taylor and Strait who were there have sued?

21 A. Yes, sir.

22 Q. And Taylor and Strait, you protected them, you felt, by  
23 ordering them to stay?

24 A. Yes, sir.

25 Q. And you were also concerned, were you not, about the

## DANIEL MARVIN - DIRECT EXAMINATION

1 slaughtering and bloodshed of the anticommunist Hoa Hoas,  
2 weren't you?

3 A. Absolutely. If we had left, and the Southern Regiment had  
4 hit and the ARVN regiment had hit, there wouldn't be anybody  
5 left on the friendly side. By us staying there, we provided  
6 that umbrella of protection, because we could get additional  
7 forces in from the outside, and they trusted us to take care  
8 of them.

9 Q. And you didn't want to betray that trust?

10 A. No, sir.

11 Q. In fact, you heard Lieutenant Strait on his tape  
12 complaining about what this government did to betray the trust  
13 of the Vietnamese?

14 A. That is correct. That was an admirable thought on the  
15 tape.

16 Q. And you weren't going to betray the trust of these people.

17 A. No, sir. None of my men were.

18 Q. And you, at one point, informed -- I think it was the C  
19 Team?

20 A. The CO of the B Team. The next thing I did was advised  
21 them that we were not -- that my men -- and I had ordered my  
22 men to stay in An Phu. And then they told me, the commanding  
23 officer of the B Team, Colonel Brewer, Lieutenant Colonel  
24 Donald E. Brewer, sent a message to me telling me he was going  
25 to send a group up the river to me. And I let him know that

## DANIEL MARVIN - DIRECT EXAMINATION

1 there would be -- I closed An Phu to all outsiders basically.

2 And then I set up an ambush with no Americans on it, the  
3 Vietnamese in charge, on the Bassac River, to stop any boats  
4 coming up the river that I had not personally authorized. And  
5 they were ordered to give them warning shots first, and then  
6 if they continued to go, that -- come up the river, they would  
7 be a danger to our integrity, and to shoot them.

8 Q. And why did you feel that was appropriate action?

9 A. Because I had a mission to perform and people to protect.  
10 You know, if I would have sent -- if I would have weakened,  
11 and sent my men down the Bassac River to the B-team, I don't  
12 know but that they would have been killed on the way down  
13 there, just to remove -- to silence them permanently. It  
14 would not be unusual, by the way, for something like that to  
15 happen in unconventional covert operations.

16 Q. Now, at some point this clashing stopped. And how did  
17 that come about? How were you able to avoid --

18 A. Major --

19 Q. -- the conflict?

20 A. Excuse me, I was just trying to gather my thoughts in my  
21 head.

22 Q. I'm sorry.

23 A. Phoi Van Le was not only the camp commander, Vietnamese,  
24 of my camp, he was also the military advisory to the Hoa Hoa  
25 central committee in a Hoa Hoa village.

## DANIEL MARVIN - DIRECT EXAMINATION

1 He sent a messenger by assault boat to Hoa Hoa village,  
2 informed them of the situation, and asked the chairman of the  
3 Hoa Hoa central committee to go meet with General Quan Van  
4 Dang, who commanded all forces in the Fourth Corps, except  
5 ours, and to -- for him to take action to call back that ARVN  
6 division that was on the way to kill us. That emissary got to  
7 Commanding General Quan Van Dang, briefed him on the  
8 situation -- Did you want me to continue on this, sir?

9 Q. Well, yeah, what I'd like you to -- what did Quan Van Dang  
10 do when he heard about the situation?

11 A. He immediately picked up the phone. He called Premier Ky.

12 MR. DEAVER: Object.

13 THE COURT: Sustained.

14 BY MR. BACHRACH:

15 Q. As a result of the contact with General Dang, what did he  
16 do next? Not what did -- not --

17 A. I understand.

18 Q. -- not who did he talk to.

19 A. I understand, sir. He got ahold of Colonel William  
20 Desobry, his senior adviser, who had a helicopter standing by,  
21 and Colonel Desobry flew him above that ARVN regiment.  
22 Because Colonel Desobry's men, Americans, were with that  
23 regiment that was on the way to attack our camp at An Phu.  
24 Colonel Desobry called down from the chopper and asked the  
25 American advisers on the ground, why are you attacking An Phu?

## DANIEL MARVIN - DIRECT EXAMINATION

1 MR. DEEVER: Object.

2 A. That's in the book, sir.

3 THE COURT: I'll sustain that. That's total hearsay.  
4 He's saying what's the third person said to a fourth  
5 person said to a fifth person.

6 MR. BACHRACH: I understand.

7 THE COURT: Strike it.

8 MR. DEEVER: Your Honor, would --

9 A. What's in the book is what happened.

10 MR. DEEVER: Excuse me. Your Honor, would you  
11 instruct the jury about the very thing that he's saying now,  
12 about the --

13 THE COURT: I just struck it from the record, that  
14 last answer. It's stricken, it can't be considered.

15 BY MR. BACHRACH:

16 Q. Now, Colonel, when we're talking here, just so you  
17 understand, I just want you to tell what happened, what people  
18 did, not what people said to each other.

19 A. All right, sir. I'm sorry. What I confused, I thought I  
20 was talking about the book and what was contained in the book.  
21 But anyway, General Dang landed in our camp.

22 THE COURT: Wait a minute. Let's start. Ask another  
23 question so we get back on track. Thank you.

24 BY MR. BACHRACH:

25 Q. Well, is what happened in the book, with respect to what

## DANIEL MARVIN - DIRECT EXAMINATION

1 you wrote about General Dang stopping the regiment that was  
2 coming south through?

3 A. Yes, sir.

4 Q. And he was with Colonel Desobry at the time?

5 A. Yes, sir.

6 Q. And isn't it true -- is it true that General Dang then  
7 came into your camp?

8 A. Yes, sir. And Colonel Desobry.

9 Q. And Colonel Desobry. I'm showing you Exhibit 35 that's  
10 been admitted into evidence. And what's this?

11 A. This is a letter written by General Quan Van Dang in  
12 November of 1988, which basically attested to what I say about  
13 him in the book.

14 Q. Could you publish for the jury, this letter?

15 A. Yes, sir. This is written to me. "Dear friend: I have  
16 fully enjoyed the reading of the two chapters from your coming  
17 book, the Bassac Bastards, Chapter 10 -- in parentheses,  
18 Chapter 10, Mission to Assassinate a Prince, and Chapter 11,  
19 Apocolypse at An Phu, end of parentheses.

20 "Though many years have passed since the events of June  
21 1966, I assure you that I recall Major Le Van Phoi's emissary  
22 coming to me in my headquarters in Can Tho and explaining the  
23 situation in An Phu with the Hoa Hoa irregulars. It was a  
24 very dramatic and crucial event that would hardly escape my  
25 memory. At the time, I commanded all Vietnamese forces in the

## DANIEL MARVIN - DIRECT EXAMINATION

1 Fourth Corps area as a lieutenant general.

2 "I would like to say it was my duty to go to your Green  
3 Beret camp in An Phu with my U.S. Army adviser, Colonel  
4 William Desobry, and personally assure the brave irregular  
5 fighters that they were safe from military tribunal action and  
6 that their amnesty was restored to them.

7 "I wanted to avoid any bloodshed between two friendly  
8 anticommunist forces, and to work towards national unity and  
9 reconciliation. The Hoa Hoa people were a very strong asset  
10 for my country, and I worked very closely with Colonel Desobry  
11 to have a happy ending to the very troubled situation in An  
12 Phu. It was our joint success.

13 "Though I do not have knowledge of all the details  
14 included in your Chapters 10 and 11 of the Bassac Bastards, I  
15 do believe you are honest in what you say, and I do not know  
16 of anything that would truthfully contradict your revelations.

17 "May the Lord bless you and your family. Sincerely yours,  
18 Quan Van Dang, your camrade in arms."

19 Now the chapter --

20 Q. No, no, no, wait for my question, please. So in writing  
21 the book, and in your mind, that letter confirmed what you  
22 wrote in the book about General Dang coming to your camp with  
23 Colonel Desobry, to stop -- stopping the potential bloodshed?

24 A. Yes, sir.

25 Q. He talks about he wanted to avoid any bloodshed between



## DANIEL MARVIN - DIRECT EXAMINATION

1 two friendly anticommunist forces, and to work toward national  
2 unity and reconciliation.

3 Now, that's very important, isn't it, to again --

4 A. Yes, sir.

5 MR. DEEVER: Object, Your Honor.

6 MR. BACHRACH: What?

7 MR. DEEVER: I'm objecting. Your commentary.

8 THE COURT: Just ask a question, okay.

9 MR. BACHRACH: Okay. Sure, Your Honor.

10 BY MR. BACHRACH:

11 Q. Now I lost my train of thought. Going back to that  
12 statement, I wanted to avoid bloodshed between two friendly  
13 anticommunist forces. Do you know who the two friendly  
14 anticommunist forces he was referring to?

15 A. Yes, sir, one would have been --

16 MR. DEEVER: Object, Your Honor.

17 A. -- ARVN --

18 THE COURT: Wait a minute. When he objects, you have  
19 to stop, okay?

20 A. Okay. Yes, sir.

21 THE COURT: All right.

22 MR. DEEVER: We have the letter in here.

23 THE COURT: Okay. I don't see that in the Federal  
24 Rules of Evidence. If you give me a reason for your objection  
25 other than the commentary, I'd appreciate it.

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1 MR. DEAVER: The letter is in, but his getting the  
2 opinion of what Mr. Dang meant by this --

3 THE COURT: I'll sustain that as hearsay. Calling  
4 for something that's in somebody else's mind is rank hearsay.

5 MR. BACHRACH: That's not -- I was asking him for  
6 what he understood, because his subjective knowledge is  
7 important, but I'll rephrase it, Your Honor.

8 THE COURT: Okay.

9 BY MR. BACHRACH:

10 Q. The situation at this time in An Phu, as you've described,  
11 were there political tensions between the Hoa Hoas and the  
12 central government?

13 A. Yes, sir.

14 Q. And without a grant of amnesty to the Hoa Hoas, did they  
15 potentially -- Were they in potential harm by the central  
16 Government?

17 A. Not only that, sir, yes, sir, but we would have lost most  
18 of our Hoa Hoa CIDG.

19 Q. And so when General Dang came to the camp, he granted what  
20 to the Hoa Hoas?

21 A. Immunity.

22 Q. And prior to that, General Dang stopped what from coming  
23 into the camp?

24 A. Stopped a regiment of ARVN, Vietnamese regiment, from  
25 attacking the Vietnamese Hoa Hoas.

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. And that's what you've written in your book?

2 A. Yes, sir.

3 Q. And that's what General Dang wrote, and confirmed in your  
4 mind the truth of it?

5 A. Yes, sir.

6 Q. I'd like to direct your attention to the pictures in the  
7 very back of your book, because --

8 A. Yes, sir.

9 Q. -- I think they're very revealing. I'd like you to show  
10 them to the jury. They're right after page 362. Okay?

11 A. Yes, sir.

12 Q. The first picture, do you recognize what that is?

13 A. That's an aerial view of my camp, sir, Camp Dan Nam, taken  
14 the day after I arrived there. From a helicopter, obviously.

15 Q. Turning to the next page.

16 A. Yes, sir. I show a lot of the facilities in camp An Phu,  
17 to include our water tower, to include a picture of my team  
18 sergeant, Sergeant Taylor, and Major Phoi, the camp commander.

19 Q. And that's Sergeant Taylor down there in the middle right?

20 A. Yes, sir. Yes, sir. Right center page. The next page --

21 Q. Well, let's --

22 A. Did you want me to go there?

23 Q. No, let's skip to the page after, so more -- What's  
24 pictured on that?

25 A. That's the one with the fire arrow up to the top? That's

## DANIEL MARVIN - DIRECT EXAMINATION

1 Q. And that's what you've written in your book?

2 A. Yes, sir.

3 Q. And that's what General Dang wrote, and confirmed in your  
4 mind the truth of it?

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7 very back of your book, because --

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9 Q. -- I think they're very revealing. I'd like you to show  
10 them to the jury. They're right after page 362. Okay?

11 A. Yes, sir.

12 Q. The first picture, do you recognize what that is?

13 A. That's an aerial view of my camp, sir, Camp Dan Nam, taken  
14 the day after I arrived there. From a helicopter, obviously.

15 Q. Turning to the next page.

16 A. Yes, sir. I show a lot of the facilities in camp An Phu,  
17 to include our water tower, to include a picture of my team  
18 sergeant, Sergeant Taylor, and Major Phoi, the camp commander.

19 Q. And that's Sergeant Taylor down there in the middle right?

20 A. Yes, sir. Yes, sir. Right center page. The next page --

21 Q. Well, let's --

22 A. Did you want me to go there?

23 Q. No, let's skip to the page after, so more -- What's  
24 pictured on that?

25 A. That's the one with the fire arrow up to the top? That's

## DANIEL MARVIN - DIRECT EXAMINATION

1 an arrow that has cans that you'd put gasoline in and light it  
2 up and point it in the direction of the enemy, so that if you  
3 were calling in, which we never had to in the main camp,  
4 friendly Air Force to go after the invaders, that would point  
5 to the enemy. And then there's just pictures of meetings  
6 and --

7 Q. Let's turn to the next page.

8 A. Yes, sir. Next page is -- there's -- I don't think  
9 there's anything we're more proud of than our civic action  
10 projects, helping the people.

11 Q. I think the next page that I have has Lieutenant Colonel  
12 Martha Raye?

13 A. Oh. That's right, I didn't turn, I just went over to the  
14 side. Right, that's Colonel Maggie come into our camp with  
15 her black nurse's kit in hand.

16 Q. Is that a true and accurate photo of Colonel Martha Raye  
17 that day coming in?

18 A. Yes, sir.

19 Q. Now, I call her Colonel Maggie; was she really a colonel?

20 A. She was designated as an acting lieutenant colonel by the  
21 commanding officer of the 5th Special Forces group.

22 Q. What kind of uniform is she wearing?

23 A. A regular jungle uniform.

24 Q. Does it designate any --

25 A. Shows the military rank of lieutenant colonel on it, and

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1 so does her beret.

2 Q. Where does it show that, so the jury understands.

3 A. It would be on the collar, on the right-hand side of her  
4 collar on this side over here, and of course also on the  
5 beret, right on the flash of the beret. The flash is the unit  
6 insignia on a beret. This particular one is for the 5th  
7 Special Forces.

8 Q. Now, did you stage that picture of her carrying a black  
9 bag?

10 A. Not hardly, sir.

11 Q. That's a true and accurate picture?

12 A. Yes, sir.

13 Q. And you didn't make up that she had a black bag?

14 A. No, sir.

15 Q. You've heard --

16 A. I think one of those men took the picture.

17 Q. You've heard the accusation from the plaintiffs that you  
18 made up that she had a black bag?

19 A. Yes, sir.

20 Q. Is that accusation at all true?

21 A. No, sir.

22 Q. Can you turn to another page, and what are the pictures  
23 here of the fire?

24 A. There was a fire that broke out in the village, and every  
25 one of my men in my team except one remained behind the

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1 command bunker, and -- I mean in the commo bunker, and I  
2 believe it was Sirois who set up an aid station outside the  
3 village to take care of any wounded villagers. And we went in  
4 and helped to put out the fire in the village, and then we set  
5 up a station in the next page where we provided goods to the  
6 local people to help them survive. And we started with my  
7 Sergeant Davis, part of my team, supervised the construction  
8 of 97 new homes, so the people had those immediately.

9 Q. Turning to the next page.

10 A. Yes, sir.

11 Q. Up at the top left, there had been some discussion,  
12 particularly in Mr. Sirois' tape, talking about captured  
13 weapons. Is that, that picture? Does that represent --  
14 what --

15 A. That represents some of the captured mines. Out of 2700  
16 mines that we captured that day, on the 17th day of January,  
17 that box on the lower box is the pipe mines, and the upper box  
18 are boobie-trapped hand grenades that we captured. They would  
19 boobie troop them so that there was a wire at about eye level  
20 or below, so they could actually walk under it and not trip  
21 it, but an American would trip it right away, or tall  
22 Vietnamese, as far as that goes.

23 Q. You didn't make that picture up, did you?

24 A. No, sir.

25 Q. And you're --

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1 A. I didn't make any pictures up.

2 Q. You're not lying what that picture says?

3 A. No, sir.

4 Q. You've heard allegations that you made up the captured  
5 weapons.

6 A. No, sir.

7 Q. You have heard the allegations?

8 A. Yes, sir.

9 Q. And you did capture weapons, correct?

10 A. Yes, sir, there's a number of general officers who came  
11 and looked at the weapons. And that's -- on the next page, by  
12 the way, the upper left-hand corner are the actual Vietnamese  
13 style toilets that we put in the toilet house that we built  
14 for the Vietnamese, because they had no showers.

15 Q. Are those the toilets that Mr. Sirois discussed that there  
16 were problems with?

17 A. No, no, these are the ones that replaced them immediately.

18 Q. Okay.

19 A. So they could squat on those. And that made -- they felt  
20 very good that we thought enough of them to do that. You see  
21 quite a few pictures of Sirois on that page, and Tony, the  
22 interpreter.

23 Q. Turning over two more pages, where it says Nhon Hoi PF  
24 outpost were Binh Ghi River joins Chau Doc River?

25 A. Yes.



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1 Q. Is there anything significant about that photo?

2 A. No. That's that photo right there. That's just to show a  
3 typical PF outpost and how the Cambodian border changed from  
4 going north-south to going east-west basically.

5 Q. Just below that is a February 9th, 1966 SVN government  
6 building at Dong Co Ki destroyed by VC sapper squad.

7 A. Yes, sir.

8 Q. What's a sapper squad?

9 A. Sapper squad is a squad that brings in demolitions, wires  
10 them up and blows up your building.

11 Q. What's the term SLR?

12 A. Side-looking radar.

13 Q. What's that?

14 A. It's a way that you can take pictures in a neighboring  
15 area, without flying over the area and being subject to  
16 antiaircraft fire.

17 Q. Are there any examples of that in the book?

18 A. Yes, sir. The very next page, on the page we just looked  
19 at on the Nhon Hoi outpost, it shows an area view of a VC  
20 bridge. And we were fortunate enough, and I think Sergeant  
21 Taylor arranged this, to get an SLR photo in the day before  
22 the main attack at Khanh Bin. Or a few days before, excuse  
23 me.

24 Q. And --

25 A. But what it shows is that the enemy had built a bridge,

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1     which would help them infiltrate our area a heck of a lot  
2     faster than having to ford the creek.

3     Q.   Was that bridge, did it cross from Cambodia into Vietnam?

4     A.   Yes, sir.   Right up about there.   Yeah, right there.

5     Q.   I'd like to -- Can you turn to a couple more pages?

6     A.   Yes, sir.

7     Q.   Where we have some dead Viet Cong.

8     A.   Yes, sir.

9     Q.   Do you recognize those pictures, the dead Viet Cong --

10    A.   Yes, sir.

11    Q.   -- at Khanh Bin FOB?

12    A.   Yes, sir.

13    Q.   And then there's a front of damaged four-room school with  
14    dead VC?

15    A.   Yes, sir.

16    Q.   Is that the school that -- I think -- I can't remember  
17    which of the --

18    A.   I think it was John Strait talking about it.

19    Q.   John Strait talked about that had been built and was blown  
20    up and then was rebuilt?

21    A.   We started building the next day, rebuilding it.

22    Q.   And these are true and accurate pictures --

23    A.   Yes, sir.

24    Q.   -- of Khanh Bin after the battle?

25    A.   Yes, sir.

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1 Q. And I see there's a wounded Striker up in the next page?

2 A. Yes, sir, we had a lot of wounded Strikers. And one of  
3 the problems we had is we could not get medevac support up in  
4 our area for the Vietnamese. We could get it for Americans.  
5 We did have two U.S. Army Special Forces personnel that  
6 were -- belonged to the Mike Force and the KKK that were  
7 slightly injured in combat at Khanh Bin, but we didn't require  
8 medical evacuation.

9 Q. So in the -- there was some discussion about the  
10 MOPSUMS --

11 A. Right.

12 Q. -- where it was reported two wounded U.S. soldiers?

13 A. Yes, sir.

14 Q. They were from the Mike Force?

15 A. That's correct.

16 Q. And what is the Mike Force?

17 A. The Mike Force is a specific force that's within Special  
18 Forces, that are on standby, they're commanded by American  
19 Green Berets, they're absolutely outstanding forces. And  
20 normally they come well equipped and everything else to help  
21 you in battle. And unfortunately for them, when you call them  
22 in, you always put them where the battle's going to be the  
23 toughest, because you want to protect your own men, rather  
24 than them, in priority.

25 Q. Now I'd like to move on to some of the last topics, I

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1 hope. I'm sure everyone does. Did you send any part of a  
2 manuscript to Jimmy Dean?

3 A. Yes, sir.

4 Q. Do you recall when that was?

5 A. 1994, I believe it was, December of '94.

6 Q. I'm showing you what's been marked as Defendants'  
7 Exhibit 13. And could you identify that for me?

8 A. Yes, sir, that's a letter that Jimmy Dean wrote me in  
9 response to my letter of December, the year before.

10 Q. Could you read that out loud to the jury?

11 A. Yes, sir. "Dear Dan:" And this is from the Special  
12 Forces Association, the very people that are financing this  
13 lawsuit. "Dear Dan: Thanks for your patience. I enjoyed  
14 Chapter 7 very much, written like a man who was on the ground  
15 and knows of what he speaks. Maggie's forward was a piece of  
16 art. Her language is ours, as she was. I wish you luck with  
17 the book.

18 "I will keep your articles on the Agency and preserving  
19 the flag for possible future inclusion in The Drop. We have a  
20 great display of Colonel Maggie artifacts in the SFA Memorial  
21 Building, and that is where your photo will go." That was the  
22 photo of Colonel Maggie and me that's in the book.

23 "I am sorry but we have not heard from Ray Johnson since  
24 1971 and have no idea what happened to him. Here is his last  
25 known address. 110 Batview Avenue, Fort Myers Beach, Florida,

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1 33931. I am enclosing the page from the SFA KIAs listed on  
2 the plaza wall to show you that Parmentier's first name is  
3 still incorrectly spelled, however, I will bring this to the  
4 immediate attention of Colonel John McMullen, and it will be  
5 corrected. Good luck and take care.

6 "Fraternally, James C. Dean, Secretary."

7 And he did take action, and my friend's was the one -- he  
8 was killed in action the fifth time in Vietnam, Green Beret  
9 all the way, the one that recommended that I join the forces.  
10 He did take the action and it was taken care of.

11 Q. Now, subsequently things changed, correct?

12 A. Yes, sir. Seems like 1997 was key.

13 Q. And I show you Exhibit 18. I'll just quickly publish it.

14 A. All right, sir.

15 Q. This is a copy of the what?

16 A. Oh, this is copy of The Drop, and inside The Drop, Jimmy  
17 Dean posted his threatening letter to Chris Millegan in The  
18 Drop for everybody, all Special Forces. Now, I thought there  
19 was 6900; that's the last time Jimmy Dean told me. But from  
20 what Sirois said on the witness stand, there's like 10,000  
21 Green Berets. But that goes out for every one of them to  
22 read. It was castigating Chris Millegan.

23 Q. And you?

24 A. And me.

25 Q. And your book?

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1 A. Yes, sir.

2 Q. I direct your attention to Exhibit 20. What's this?

3 A. This is a copy of the -- What do they call it. Some kind  
4 of beer can. This is a publication of the Special Forces  
5 Association. The Bugged Beer Can is what it's called. And in  
6 that -- this is for September 2003 -- they note here that  
7 Jimmy also -- Jimmy -- Jimmy -- the same Jimmy -- also briefed  
8 Chapter 118 on Lieutenant Colonel Retired Dan Marvin and his  
9 book, Expendable Elite, which has been proven to be  
10 100 percent lies.

11 Now, the Special Forces Association has never sent me one  
12 single item to prove anything was wrong. Oh, excuse me.

13 Q. And you read the testimony of certain of the plaintiffs  
14 that they associated with Jimmy Dean and told him --

15 A. Yes, sir.

16 Q. -- it was full of lies?

17 A. Yes, sir.

18 Q. How have the actions of the plaintiffs, who are being  
19 funded by the Special Forces with respect to this lawsuit,  
20 affected you?

21 A. Well, it affected me in a number of ways, but primarily  
22 financially. I have gone into debt about \$50,000 in putting  
23 together a defense on -- on this court action. And in  
24 helping -- and actually some of that was helping South  
25 Vietnamese in this book get into this country, because our

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1 Government didn't want them in this country.

2 And it's also caused people to -- especially within  
3 Special Forces, they have put out the rumor, the inaccurate  
4 information, the lie, that my book is 100 percent lies, to  
5 10,000 Green Berets. Now, that was my target audience.

6 In fact, when I initially sent Jimmy Dean a copy of the  
7 complete manuscript, it was with a note which I would like to  
8 have kept a copy of, suggesting that he use that to suggest to  
9 the Special Warfare Center future training that they not allow  
10 anything like this to happen again to Green Berets.

11 Q. And so it's affected you financially, in that you've had  
12 to incur extensive costs?

13 A. Yes, sir.

14 Q. You estimated 50,000; is it growing?

15 A. Oh, it's grown, yes, sir, just right here today it's  
16 growing.

17 Q. And you also indicated that it's stifled your ability to  
18 sell the book?

19 A. Yes, sir.

20 Q. How --

21 A. And it's caused people, you know, even within the family,  
22 to question me, because my own men are suing me. And they  
23 just can't understand that. How could your own men, that  
24 they've read about as being heroes in my book, set here in  
25 this courtroom and have -- sign a lawsuit against me?

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1 Can I mention about my call to Ray Johnson?

2 Q. Well, we'll get to that.

3 A. All right, sir.

4 Q. Has it caused you family strife?

5 A. Yes, sir.

6 Q. In what way? How has it affected your family life?

7 A. This lawsuit, sir, has affected my family life --

8 Q. How --

9 A. -- a good deal. Because --

10 Q. You have to explain so the jury understands.

11 A. Yeah. My wife prays for me every day about this lawsuit.

12 But she's most concerned that we'll go bankrupt and that we'll

13 lose everything that we have, because my men are telling me

14 that what they've told me, and I published, is lies.

15 Q. And how has that emotion -- has it emotionally affected  
16 you?

17 A. Yes, sir, I -- before every day of the trial, I have to  
18 pray to the Lord to help me to handle my emotions here in the  
19 courtroom. And I don't mean mean emotions, I mean when I see  
20 men that I'd like to go up and hug, and they have turned  
21 themselves into my enemies in this courtroom, people that I  
22 trusted when I sent them copies of the manuscript, that when  
23 they sent me back information to add to it, that it was true.  
24 And it's killing me. It's bad. Nothing has ever affected me  
25 as bad as the knowledge that my own men have turned against



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1 me.

2 Q. How did you portray your soldiers in this book? How do  
3 you feel you portrayed them?

4 A. You know, as some of them have testified here in court, it  
5 would be hard for anybody -- in fact, I've never met a man yet  
6 or a woman who has read this book, who doesn't come up and say  
7 you were sure lucky to have those kind men with you. And I  
8 said, I sure am blessed that they were there. Because we did  
9 our job better than any team ever in Vietnam.

10 Q. What do you think of your men? Not now; what did you  
11 think of them then?

12 A. The best damn Green Berets I ever met.

13 Q. And now?

14 A. I mean that.

15 Q. And now, as a result of this lawsuit, you've discussed  
16 your emotional -- Has it harmed your reputation at all?

17 A. Yes, sir.

18 Q. How has it harmed your reputation?

19 A. It's with them suing me for this book being, like they  
20 say, a pack of lies, a bunch of bullshit, some of them say,  
21 different things, and where I've been telling them that this  
22 book is a book of truth, that causes them to question in their  
23 minds, why would a Federal Court judge listen to these  
24 complaints if there wasn't some possibility that I was the one  
25 that was not telling the truth. That hurts.

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1 Q. Now, in writing the book, were there certain things you  
2 didn't put in?

3 A. Yes, sir. There were -- when I first arrived at Can Tho,  
4 Nancy Sinatra was doing her thing there in Can Tho. And in  
5 those days -- this was before I got saved -- I would drink.  
6 And I got drinking pretty heavy that night. I swore, as all  
7 my men did -- I don't think there's a Green Beret, at least  
8 none that I ever met, that didn't do some terrible language,  
9 swearing. But my wife asked me -- the first -- by the way,  
10 the first manuscript of this book, John Strait even called me  
11 on the phone and told me that we shouldn't have so much bad  
12 language in there. And my wife, I told her about that, and  
13 she said really you should do that book so that it's still all  
14 the truth, but you leave out anything that would cause it to  
15 be bad for a child in school to read. And that's what I did.

16 Q. Are there any other errors or that, that you've come  
17 across since it's been published?

18 A. Oh, there's some -- few typographical errors, the errors  
19 in the message, having the names in the messages. Just small  
20 errors. Nothing that would affect the context of the book.

21 Q. But other than the errors and the keeping out of the  
22 swearing and the drinking, what you've reported and what  
23 your -- the soldiers have complained about, those statements  
24 are true?

25 A. Yes, sir.

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1 Q. And you have no doubt in your mind they're true?

2 A. No doubt at all. No, sir.

3 Q. And did you also -- and you relied on them to confirm the  
4 truth?

5 A. Oh, I've got their word. And their word, I thought, was  
6 good.

7 Q. Now they want to say what they told you before was not  
8 true.

9 A. I wish I knew why. And I prayed a lot on that.

10 Q. Okay. You mentioned a discussion you had with Ray  
11 Johnson; what was that?

12 A. Well, I got the lawsuit out of the blue. Ray Johnson and  
13 his wife, Marlene, and I and Kate, my wife, were just before  
14 that, planning to have a get-together up in Worchester, Mass.  
15 In fact, I've got to know his best friend's son real well; he  
16 was part of the church organization invited me up there to  
17 speak.

18 And when I got the lawsuit, it hit me real hard, so I  
19 called Ray. Because I'm not one that will hold back from  
20 telling somebody the truth, even if it hurts. And I -- when  
21 Ray answered the phone, I said, Ray, I just got the lawsuit.  
22 And I'm hurt. And he said, I'm hurt, too, Dai-uy. Dai-uy is  
23 captain. And I said, Why did you do it? And he said, I can't  
24 talk about it. He says, All I can tell you is they called me  
25 down there, wherever that was, and told me to sign it, and I

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1 signed it. He says, I don't know what it's all about. And he  
2 hung up.

3 MR. BACHRACH: Just give me a minute, Your Honor.

4 BY MR. BACHRACH:

5 Q. Colonel, I want to direct your attention to page 266.

6 A. Yes, sir.

7 Q. You wrote the paragraph, after breakfast on the 13th?

8 A. Yes, sir.

9 Q. In what detail did you brief your men on Operation Snuff  
10 Crown?

11 A. This was -- brief them for the need of training a group of  
12 men for a specific mission, which would have them act as if  
13 they were Viet Cong or North Vietnam, wouldn't matter what  
14 they thought, if they were captured or killed, but the mission  
15 was to be prepared to go a long distance under a very  
16 dangerous situation. And my men were responsible to make sure  
17 they had the right equipment.

18 I know I've heard the argument that the HT-1 radio and the  
19 uniforms and everything else they were wearing would not  
20 necessarily be identical, except for the black pajamas, to the  
21 Viet Cong. Well, everything that we used in that camp, enough  
22 of it had been captured and used by the Viet Cong, that I had  
23 no concern on that.

24 Q. Well, what was the planning paper?

25 A. It's in the book. Page 347, sir.

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1 Q. And that's the planning paper you gave them?

2 A. Yes, sir. That was on the --

3 Q. And that --

4 A. On the 12th.

5 Q. That, in a way, explains that the mission was to  
6 assassinate Prince Sihanouk?

7 A. They were never told anything about the assassination of  
8 anybody, much less the head of a foreign Government.

9 Q. So on page 266, when you briefed your men on Operation  
10 Snuff Crown, you briefed them on what they had to do for  
11 training; you didn't tell them what the mission -- the  
12 ultimate goal of the mission.

13 A. Correct, sir.

14 MR. BACHRACH: I have no further questions, Your  
15 Honor.

16 THE COURT: Okay.

17 THE COURT: You're up.

18 MR. DEAVER: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. DEAVER:

21 Q. You were assigned to Korea, and you said that you got  
22 there just before the war ended?

23 A. That is correct, sir.

24 Q. You arrived in Korea in March of 1954, didn't you?

25 A. I'd have to look at my records to get the exact dates.

## DANIEL MARVIN - CROSS-EXAMINATION

1 Q. Would you mind looking, please?

2 A. I would have to go to my attorney. They're on the --  
3 they're in there on the bench there. Do you have copies?

4 Q. You did not arrive until 1954, did you?

5 A. That is correct.

6 Q. Isn't --

7 A. It's the Department of the Army that determined if I was  
8 to get or not to get a Korean Service Medal.

9 Q. The Korean war ended, the truce was signed, the  
10 demarcation line, what is called now the demilitarized zone,  
11 the 4000 meters between the north and the south of the  
12 Koreas --

13 A. Yes, sir.

14 Q. -- was established on July 27th, 1953, wasn't it?

15 A. I don't know that, sir. Have you got something to say  
16 that?

17 Q. Yes, I can -- Excuse me. Do you deny that the truce in  
18 Korea was signed and executed, became effective on July 27,  
19 1953?

20 A. I just don't honestly know, sir. I know that the  
21 Department of the Army enters on to your official military  
22 personnel records file, whatever you were authorized, based on  
23 the special orders assigning you, and your EDCSA date, your  
24 effect date of change of strength account, and I earned,  
25 according to the Department of the Army, the Korean Service

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1 Medal. I don't know if that bothers you, but I did, and  
2 that's what they said.

3 Q. This is not really what I'm asking. I'm going to ask, the  
4 war had been over seven months before you got there, wasn't  
5 it?

6 A. I don't know, sir. There was some activity in my area, I  
7 can say that.

8 Q. What kind of activity?

9 A. As I explained earlier to the jury, it was activity of  
10 guerrilla type warfare against our compound. We supported the  
11 First Marine Division. They had problems, too. We still had  
12 .50 caliber machine guns on our trucks.

13 Q. They --

14 A. Working on roads.

15 Q. There's still .50 caliber machine guns on the truck,  
16 aren't there?

17 A. Being used.

18 Q. You had this breakfast with Colonel Tuttle that you  
19 testified about.

20 A. Yes, sir.

21 Q. And he told you that you were going to be assigned to An  
22 Phu because of your quartermaster background and your supply  
23 work that you had done with the Sixth Special Forces in Fort  
24 Bragg, didn't he?

25 A. Those are your words, not his, sir.

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1 Q. I'm asking you.

2 A. No, sir. I told you exactly, and it's written right in  
3 the book. Besides that, he didn't order me to do anything.  
4 He asked me if I would accept the top secret mission of  
5 independent operation. You don't order anybody to take a  
6 covert operation. Period.

7 Q. Colonel Tuttle didn't order anybody to take a covert  
8 operation, did he?

9 A. I would not expect Colonel Tuttle to ever admit to that.  
10 He said, when I walked out that door, it would be as if I was  
11 never there. I would have just been a normal movement through  
12 the C Team, without even having to meet the C Team commander,  
13 to the B Team, who was the only one authorized to assign me,  
14 if it was a normal assignment.

15 Q. You had a totally different treatment in Vietnam, than any  
16 other Special Forces soldier, didn't you?

17 MR. BACHRACH: Objection.

18 THE COURT: Basis.

19 MR. BACHRACH: Foundation.

20 THE COURT: Overruled. Go ahead.

21 A. It was a very special assignment, sir. I wouldn't have  
22 expected that if there was another operational assignment like  
23 mine in any place in Vietnam, that I would know anything about  
24 it, nor would you, nor would Colonel Tuttle. Only those  
25 people that are in the compartmentalized chain of command



## DANIEL MARVIN - CROSS-EXAMINATION

1 would know. And you know that.

2 Q. But this was top secret.

3 A. Yes, sir.

4 Q. Were you cleared for top secret?

5 A. Yes, sir.

6 Q. Do you know to whom you can share top secret information?

7 A. Those with a need to know, sir. In an independent  
8 operation though, all rules are thrown aside.

9 Q. I'm going to show you what is -- you furnished as a copy  
10 of your --

11 MR. DEAVER: May I approach the witness?

12 THE COURT: Sure.

13 BY MR. DEAVER:

14 Q. -- your military records.

15 A. Oh, yes, sir.

16 Q. Will you -- will that allow you to refresh your  
17 recollection about when you arrived in Korea?

18 A. Says right here, sir.

19 Q. That's what I'm asking.

20 A. The 28th day of February 1954. It's been lined out once  
21 and then changed, but that's what the final change was.

22 Q. Do you know who lined it out?

23 A. No, sir. How would I know that? This is an official Army  
24 record.

25 Q. They're --

## DANIEL MARVIN - CROSS-EXAMINATION

1 A. This is an official Army record, sir, not mine.

2 Q. You provided it to me, didn't you?

3 A. Yes, sir. I got it from the Department of the Army.

4 Amongst others. There's -- I've got four different sets of  
5 records, because I was enlisted and commissioned, enlisted and  
6 commissioned. This is not the final one. This is not the one  
7 that even shows the top secret classification.

8 Q. Do you have a record that shows top secret classification?

9 A. Yes, sir, right back there on the bench. I showed it to  
10 my attorney this morning.

11 MR. DEAVER: Could I have this marked, please, as  
12 Defendants' Exhibit 39 -- Plaintiffs' Exhibit 39. May I give  
13 copies to --

14 BY MR. DEAVER:

15 Q. I show you what's been marked as Plaintiffs' Exhibit  
16 No. 39.

17 A. All right, sir.

18 Q. I'd ask you to -- if you recognize that.

19 A. Well, it's the first I've seen it, sir, the recent one,  
20 yes, but it's the Army Regulation 380-5.

21 Q. And what is that, please?

22 A. Says the Department of the Army information security  
23 program, dated September 2000. I would not have had an  
24 opportunity to see this.

25 Q. Well, I tell you what I'll do, I'll leave it with you --

## DANIEL MARVIN - CROSS-EXAMINATION

1 I'll leave you a copy of it.

2 A. Thank you.

3 Q. Then I'll move on to something else and ask you about this  
4 tomorrow.

5 A. Oh.

6 Q. Okay?

7 A. I guess I'm going to be here tomorrow. Okay.

8 THE COURT: You may want to do it today, because I  
9 don't know whether you're going to talk to him tomorrow.

10 Q. All right, then look at --

11 MR. DEAVER: Thank you, Your Honor, for that.

12 BY MR. DEAVER:

13 Q. Let's go then to the classification on page --

14 MR. BACHRACH: I'm going to object to any questions  
15 about this document. The witness doesn't recognize it,  
16 doesn't know what it is, there's been no foundation laid for  
17 it.

18 THE COURT: I mean, I don't know what a 2000 Army  
19 regulation has to do with anything in 1966.

20 MR. DEAVER: We're talking about top secret.

21 THE COURT: Okay. You can ask him about top secret;  
22 you've been doing that. But --

23 A. I believe you have a copy of the record that shows I have  
24 a top secret clearance.

25 Q. I do?

## DANIEL MARVIN - CROSS-EXAMINATION

1 A. I've had it since the 60s.

2 Q. Was that -- Is it on this one?

3 A. It's on my latest military personnel record that you have.  
4 My officer personnel record. The one that I retired with.

5 Q. Now, whenever -- I'll move on to something else then, and  
6 possibly I can rehabilitate myself on this.

7 A. Thank you, sir.

8 Q. You have given a deposition, have you not, to -- in this  
9 lawsuit?

10 A. Yes, sir.

11 Q. And you have testified concerning the Nancy Sinatra that  
12 you were talking about?

13 A. Just a few minutes ago, yes, sir.

14 Q. And you complete -- that gave an account, did it not, of  
15 what occurred at the -- Christmas Eve -- Christmas Eve day at  
16 Can Tho in 1965, did it not?

17 MR. BACHRACH: Objection. Is he asking him about  
18 what he said in the deposition?

19 THE COURT: Okay. Which one are you asking about,  
20 the deposition or right now?

21 MR. DEEVER: The deposition.

22 THE COURT: Deposition can be used for impeachment,  
23 but you've got to have an inconsistent statement to start off  
24 with, so, for example, he denies something he said in the  
25 deposition, then you can use a deposition, but you can't have

## DANIEL MARVIN - CROSS-EXAMINATION

1 a memory test on the deposition.

2 BY MR. DEAVER:

3 Q. Let's look at the page of your -- on page 13 --

4 A. Yes, sir.

5 Q. -- of the Expendable Elite.

6 A. Yes, sir.

7 Q. "On Christmas Day I stuffed myself with the traditional  
8 turkey dinner and thought of the many Christmas dinners Kate  
9 had spoiled me with, especially with mincemeat pie, my  
10 favorite. After dinner I took a quick shower and then, pen in  
11 hand, I wrote and told her where I was going and what I had  
12 learned about the situation on the ground in An Phu, and about  
13 the courage of the Hoa Hoa fighters. 'Not to worry,' I wrote,  
14 'because I'm with good people.' I said nothing that would  
15 alarm her or cause her any concern, and let her know how much  
16 I missed her. Once I got settled under the mosquito net and  
17 closed my eyes, even the heat of the night did not deter me  
18 from sleeping well, very well."

19 Now, that is what you wrote in Expendable Elite.

20 A. Yes, sir, and that's the truth. Now, after -- after the  
21 words missed her, in the original Bassac Bastards -- I believe  
22 that's where it was -- then I told about going back to the  
23 club and watching Nancy Sinatra and getting drunk. And then  
24 when I got back into the bed, I slept very well.

25 You know, I wrote -- this is my book, sir. This book was

## DANIEL MARVIN - CROSS-EXAMINATION

1 written for three purposes. One, to tell the world about the  
2 Hoa Hoa people, the most wonderful people I've ever met in my  
3 life. Secondly, it was to tell the truth about what the Green  
4 Berets did best in independent and unconventional warfare  
5 operations. And the third --

6 Q. Excuse me.

7 A. -- it had nothing to do with Nancy Sinatra.

8 Q. Excuse me. Would you please respond to the question.

9 A. I was trying to, yes, sir.

10 Q. You wrote in Snuff Crown that you did get drunk, that  
11 you --

12 A. Um-hum.

13 Q. -- got in arm wrestling matches?

14 A. Yes, sir.

15 Q. And threw somebody over a counter?

16 A. Yes, I was a tough sucker.

17 Q. And that you drank a fifth of vodka by yourself.

18 A. I usually did, yes, sir.

19 Q. And that wasn't true, was it?

20 A. That was true.

21 Q. Didn't you write in your manuscript for Snuff Crown, that  
22 every word in it was true?

23 A. Yes, sir.

24 Q. But --

25 A. To the best of my knowledge and belief.

## DANIEL MARVIN - CROSS-EXAMINATION

1 Q. But it wasn't true, was it?

2 A. That I had gone to the club and drank vodka?

3 Q. Yes.

4 A. Yes, sir.

5 Q. But it wasn't in this book then, was it?

6 A. The fact that it is not in here, doesn't make what is in  
7 here not true. I think that's the truth.

8 Q. It's a totally different account, isn't it?

9 A. It left a part out, yes, sir, the part that would not do  
10 my grandchildren a bit of good. Nor anybody else.

11 Q. And that's the reason you left it out?

12 A. Yes, sir.

13 Q. But not in the -- took it out of the other manuscripts. I  
14 mean, you left it in the other --

15 A. This is the only one that counts, sir, this is the one  
16 that was published.

17 Q. Well, on your forward, which is on --

18 A. That's Colonel Martha Raye's forward, sir.

19 Q. Your forward in your book. This is the forward in your  
20 book?

21 A. The forward in my book, yes, sir.

22 Q. And you have that, that -- in that, that Lieutenant  
23 Colonel Martha Raye, United States Army Nurses Corps?

24 A. Yes, sir. You brought that out earlier, yes, sir.

25 Q. Is that what she put on there?

## DANIEL MARVIN - CROSS-EXAMINATION

1 A. She signed it Colonel Maggie. Martha Raye, Colonel  
2 Maggie. You have a copy of the -- her computer printout,  
3 which had exactly how she signed it. I put this in because I  
4 respected Colonel Maggie. And I respected the fact that --  
5 and you can read it in any book about Colonel Maggie, that  
6 when she went to camp, she'd help out with the wounded,  
7 treating the wounded.

8 So I gave her colonel -- the commanding officer of the  
9 Fifth Special Forces group gave her the acting rank of  
10 lieutenant colonel, then I gave her a Nurse Corps designation.  
11 Didn't hurt anybody. Doesn't hurt any of these men, that's  
12 for sure.

13 Q. But it isn't true, is it?

14 A. It's -- No, neither is the fact of -- the commanding  
15 officer of the Fifth Special Forces group can't designate her  
16 an acting lieutenant colonel, and authorize her to wear  
17 military uniforms, and authorize her a beret that she's not  
18 authorized to wear. But none of us ever complained about it.

19 Q. So it's all right since you can show her as something that  
20 she isn't, and it's not hurting anything, so it doesn't matter  
21 whether it's true or not. Is that what you're saying?

22 A. I did it in that high regard for Martha Raye. Period.

23 Q. But not in high regard for the truth, was it?

24 A. I believe it did.

25 Q. You think it was true then? High regard for the truth --



## DANIEL MARVIN - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. -- to put something that isn't true?

3 A. It's not that it isn't true, to the extent that that's how  
4 I felt about Colonel Maggie.

5 Q. But that isn't what she was, is it?

6 A. No, I don't even -- I mean, Maggie's not her name, either,  
7 but that's what we called her.

8 Q. That's not the way it's signed there, is it? It's not  
9 signed Colonel Maggie --

10 A. No, in the book it calls her --

11 Q. -- it's signed, you show it as Lieutenant Colonel United  
12 States Army Nurses Corps.

13 A. I know one thing, sir. I haven't had any complaint from  
14 anybody that loved Martha Raye, about what I did. I'm happy  
15 with that.

16 Q. All right. Well, what we're talking about, if you don't  
17 mind, is the truth, not who's happy with it, not who likes it,  
18 who dislikes it, but what is true.

19 A. It's not an exact --

20 MR. BACHRACH: Objection, Your Honor. He's lecturing  
21 the witness.

22 THE COURT: Well, the witness is also cutting him  
23 off. So ask a question, answer a question, ask a question,  
24 answer a question.

25 A. Yes, sir.

## DANIEL MARVIN - CROSS-EXAMINATION

1 THE COURT: Okay. You ask a question again.

2 BY MR. DEAVER:

3 Q. Martha Raye was not a lieutenant colonel, was she?

4 A. Yes.

5 Q. She was given an honorary, not an acting, but an honorary  
6 title by the Special Forces at some ceremony recognizing her  
7 for her efforts in visiting these camps, and her contacts and  
8 trying to boost the morale and entertaining the men of the  
9 Special Forces.

10 A. That is correct. So she was, in his mind, when he  
11 appointed her --

12 Q. You don't know what was --

13 A. -- lieutenant colonel.

14 Q. You don't know what was in his mind, do you?

15 A. Well, what he said at the ceremony.

16 Q. But she was not given an acting lieutenant colonel rank,  
17 was she?

18 A. Yes, she was given an acting --

19 Q. She was given an honorary title, wasn't she?

20 A. Whichever you say, sir. She was not --

21 Q. Not what I say --

22 A. She was not a lieutenant colonel in the U.S. Army Nurse  
23 Corps, and I admit that that's -- that statement is true. And  
24 what I say in the book, as far as her rank and the Nurse Corps  
25 is not true.

## DANIEL MARVIN - CROSS-EXAMINATION

1 Q. And you also said that you took out the -- removed the  
2 portion about getting drunk to protect, so that children  
3 wouldn't get the wrong impression about Special Forces or  
4 about the United States Army, didn't you?

5 A. I wanted people of all ages to be able to read the book,  
6 as my wife has suggested. I even left out the fact -- maybe  
7 you'll object to this, too -- that we drank beer all the time.  
8 One of the defendants mentioned it. The water wasn't that  
9 good in Vietnam. We drank Cambodian beer. I mean, I hope  
10 that I don't ever get sent to court for that.

11 Q. Let me show you on page 17 --

12 A. 17?

13 Q. This is --

14 A. All right, sir.

15 Q. On 17 in your book, read, if you will, please, that first  
16 full paragraph.

17 A. "I leaned out -- I leaned out the door to see what was  
18 ahead on the ground. No sign of VC, just a bunch of unarmed  
19 peasants working their rice field. Men, women and children,  
20 maybe 20 in all with two water buffalo, were toiling away and  
21 showing no outward sign of concern about our approach.  
22 Suddenly both door gunners began firing their machine guns at  
23 the people on the ground, spraying the area with hundreds of  
24 deadly rounds. I watched helplessly as some of the peasants  
25 were hit and spun around or knocked down by the force of the

## DANIEL MARVIN - CROSS-EXAMINATION

1 bullets, to fall in grotesque heaps in the shallow water  
2 below. Others, attempting vainly to outrun the hail of  
3 machine gun fire, were hit in the back and propelled forward  
4 by the impact to fall face down in the paddy -- face down in  
5 the paddy. I asked myself, 'What in the blue blazes is going  
6 on? Why are they killing these people?' I gripped the edge  
7 of the door with one hand and took hold of a tie down strap  
8 dangling from inside the fuselage and leaned out far enough to  
9 watch -- to search the scene of carnage for weapons. There  
10 were none!"

11 Did you want me to continue on, sir?

12 Q. Yes, the next paragraph.

13 A. "We began to circle. Convinced they'd knowingly killed  
14 innocent people, I wondered if they were going back to make  
15 certain there would be no more witness to the carnage.  
16 Looking far ahead as the chopper slowed to about 40 miles an  
17 hour and dropped closer to the ground, I saw only motionless  
18 bodies scattered about in the blood-stained rice paddy. The  
19 water buffalo had somehow survived the attack and stood secure  
20 in their yoke, waiting for direction from their now lifeless  
21 handler, lead ropes still clenched in his fist. Horrified, I  
22 jabbed the lieutenant with my elbow and asked if he'd seen any  
23 weapons down there."

24 Q. Is this the kind of information you want these young  
25 children to be reading about?

## DANIEL MARVIN - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. You do?

3 A. Yes, sir. The hopeless -- the wanton killing of people to  
4 satisfy General Westmoreland's body count, I think everybody  
5 should know about. And they should ask their parents. If it  
6 bothers them, the parents would read the book first. Let's  
7 hope they would.

8 Q. But they shouldn't hear that you or your men drank --  
9 drank any liquor or saw Nancy Sinatra, or saw any as troop  
10 entertainment?

11 A. That's a judgment I made, sir.

12 Q. Yes. Is that what you're saying --

13 A. This is what I'm saying.

14 Q. -- this is all right?

15 A. Yes, sir, this is important.

16 Q. This, in fact, never happened anyway, did it?

17 A. It wouldn't be in the book if it didn't happen, sir. I've  
18 told you that.

19 Q. You were just being shuttled from one camp to another by a  
20 full bird colonel in a helicopter?

21 A. You see what this says, sir. This is the truth. Period.

22 Q. Then you -- the next helicopter ride you had or the  
23 next -- when you had -- you were in the camp and had a meeting  
24 of the detachment commanders at Can Tho?

25 A. I didn't have the meeting, but the CO of C-4 called all

## DANIEL MARVIN - CROSS-EXAMINATION

1 the team leaders into Can Tho for a meeting.

2 Q. There was a meeting in Can Tho?

3 A. That's correct.

4 Q. And you were carried to it by -- in a helicopter?

5 A. That is correct.

6 Q. And it just happened on that occasion that two helicopters  
7 just -- it was just a routine flight back to the camp, the two  
8 helicopters got to racing and crashed at Can Tho, right on  
9 the -- the helicopter pad of the base.

10 A. Sir, you said on the way back to the camp. Actually it  
11 was on the way to Can Tho.

12 Q. To Can Tho.

13 A. Yes, sir. On the way to Can Tho, two reckless pilots did  
14 crash, and very fortunately, nobody was killed. Few body  
15 burns, like I had. But it happened just exactly like it says  
16 there.

17 Q. Did you know -- I believe he was the captain or major  
18 then, Orling?

19 A. No, sir.

20 Q. The S-3 for Colonel Tuttle?

21 A. No, sir.

22 Q. Now, you say that there was a five-day battle at Khanh  
23 Bin.

24 A. Yes, sir. And that's supported by documentation. Even at  
25 the Joint Chiefs of Staff level.

## DANIEL MARVIN - CROSS-EXAMINATION

1 Q. Is it supported by that document that you prepared, the --

2 A. I would have prepared it, yes, sir, nobody else would  
3 have. You have a copy of that, sir.

4 Q. This monthly operational summary?

5 A. Yes, sir.

6 Q. For May?

7 A. Yes, sir.

8 Q. And you prepared this?

9 A. I did, based on the input from people within the camp.  
10 And shows statistics.

11 Q. But you prepared this and sent it forward, did you not?

12 A. Yes, sir.

13 Q. Were you permitted to retain a copy of this report?

14 A. No, sir. May I remind you that I kept everything that I  
15 could, and sent a copy home so that I could protect myself  
16 against the Government when they decided to turn against me.

17 Q. You're concerned about the government doing harm to you,  
18 aren't you?

19 A. I was, until I got saved, sir.

20 Q. The government has never harmed you, has it?

21 A. That's because I was a part of the government that harmed  
22 others, until I got saved.

23 Q. But it has never harmed you, has it?

24 A. No, sir.

25 Q. You have no fear of what the government will do to you?

## DANIEL MARVIN - CROSS-EXAMINATION

1 A. That is correct, sir, I just fear for my family and what  
2 they'd do to them.

3 Q. Has anything ever been done to you or your family?

4 A. Yes, sir. Congressman Matthew McHugh, in 1991, had his  
5 senior staffer in Ithaca, New York, Jean McPheeters is her  
6 name, call my wife and tell her, when I was fighting for  
7 General Dang --

8 MR. DEAVER: Object. Object.

9 THE COURT: You asked the question.

10 MR. DEAVER: I'm not -- the --

11 THE COURT: No, you asked the question, has anything  
12 ever been done to you or your family, and he's telling you  
13 what happened.

14 A. Jean McPheeters called my wife and said, You can tell  
15 Colonel Marvin that he may not be afraid of anybody but Jesus  
16 Christ, but remind him, he's got grandchildren. Now, that was  
17 in 1991. And it was just last year before my family felt  
18 comfortable enough to get together as a family.

19 Q. Has any harm ever been done to any of your family?

20 A. Because Jesus protects us, no.

21 Q. These men, the plaintiffs, were -- you say, were good  
22 soldiers?

23 A. They weren't just good, sir, they were the best.

24 Q. Well, every unit you've ever been in has been the best,  
25 hasn't it?



## DANIEL MARVIN - CROSS-EXAMINATION

1 A. No, sir.

2 Q. Do you know any reason why any of these men would complain  
3 to you, complain to the publisher about publishing a book,  
4 this Expendable Elite?

5 A. They never have, sir.

6 Q. They haven't complained?

7 A. No, sir.

8 Q. The reason --

9 A. Only their attorneys have.

10 Q. They are in court today, are they not, and you heard their  
11 testimony.

12 A. Sir, you asked if they complained, and they have not, sir.

13 Q. They were not complaining here in court?

14 A. I don't know anything about the legal qualifications.

15 Q. Well, they were complaining about what you had written  
16 when they were testifying, were they not?

17 A. Yes, sir, and I wish I knew why.

18 Q. Well, would one reason be that because it was untrue?

19 A. If that were true, then all of their statements earlier,  
20 even in their depositions, were false.

21 Q. Were there any statements by Mr. Kuchen that --

22 A. I had no contact with Mr. Kuchen. I don't think we ever  
23 even deposed him.

24 Q. You heard his testimony, did you not?

25 A. Yes, sir. In fact, he's the only one that the Special

## DANIEL MARVIN - CROSS-EXAMINATION

1 Forces Association, to the best of my knowledge, didn't send  
2 their six-page questionnaire to, to send my attorney a copy  
3 of. We were completely in the dark. I was surprised,  
4 unfortunately.

5 Q. But you heard his testimony?

6 A. Yes, sir.

7 Q. And you heard him say that An Phu was a very calm peaceful  
8 area, that -- where he was located, and it was just no  
9 problem?

10 A. That's what he said, sir. I heard him say it.

11 Q. And he was proud of what he did.

12 A. He should be proud of everything he did in An Phu, sir.

13 Q. Well, I think he said he was. But he's not proud of what  
14 he didn't do, didn't he say?

15 A. I don't remember that, sir.

16 Q. He said that he -- that none of this happened, all -- none  
17 of these battles, none of these meetings that you related to  
18 him here took place. Didn't he say that?

19 A. Yes, sir, but that doesn't mean it's true.

20 Q. The fact that it's written in the book doesn't mean it's  
21 true either, does it?

22 A. Yes, it does, sir.

23 Q. Oh, okay. If it's written, it --

24 A. If it's written in my book, sir, it's true.

25 Q. And he told you that -- Excuse me, let me get this

## DANIEL MARVIN - CROSS-EXAMINATION

1 exhibit.

2 THE COURT: Go ahead, Mr. Deaver.

3 MR. DEAVER: Would you mark this as Exhibit No. 43.

4 BY MR. DEAVER:

5 Q. I'm going to show you what is marked as Plaintiffs'  
6 Exhibit 40, and ask you if you recognize that.

7 A. Yes, sir, I provided it.

8 Q. And what is it?

9 A. It's an article that was written in the paper about An Phu  
10 Villagers Have No Fear of the Viet Cong. And they actually  
11 didn't, because they had a superior force protecting them.  
12 CIDG, Regional Forces, Popular Forces, 25, 155 millimeter  
13 guns, and my -- and an A Team.

14 Q. This is probably the most pacified area in South Vietnam.

15 A. That's right, sir, until they decided to try and take it  
16 over, and I'm glad we were there when they did. What's the  
17 date on that, sir?

18 Q. February the 19th, 1966.

19 A. Thank you, sir.

20 Q. And that whole article -- this is in the -- in your -- the  
21 notebook here --

22 MR. BEN DEAVER: It's not. We're going to add it.

23 MR. DEAVER: We will add that to it.

24 THE COURT: It's No. 23. Plaintiffs' Exhibit No. 23  
25 in the book --

## DANIEL MARVIN - CROSS-EXAMINATION

1 MR. DEEVER: Yes, sir, I don't think we included that  
2 in their book.

3 THE COURT: Okay.

4 MR. BEN DEEVER: That's correct, Your Honor.

5 THE COURT: I'm sorry.

6 MR. DEEVER: I mean, we were waiting until we did  
7 admit it.

8 THE COURT: That's fine. Sorry.

9 BY MR. DEEVER:

10 Q. Would you read the first two -- or the three -- first two  
11 paragraphs of that?

12 A. All right, sir. "An Phu. This is probably the most  
13 pacified area in South Vietnam. The speaker is Staff Sergeant  
14 Antose D. Tenorio, a short powerful man who is a senior medic  
15 for Special Forces Team A-424 at An Phu. 'I've been here nine  
16 months, and it's been quiet every minute,' he declares."

17 Q. Now, in Expendable Elite there was a lot of activity --  
18 according to Expendable Elite, a lot of enemy activity, a lot  
19 of combat. You were tested.

20 A. I don't believe I noted any in there prior to February the  
21 19th that affected the villagers of An Phu. You know, this is  
22 just like the Battle of the Bulge. Before the Battle of the  
23 Bulge hit, things were very peaceful in that area. This is a  
24 tribute to Major Phoi Van Le, a veteran of 18 years of  
25 fighting, who kept his area safe.

## DANIEL MARVIN - CROSS-EXAMINATION

1 Q. But it is not what Expendable Elite says was going on up  
2 till February the 19th, is it?

3 A. Yes, sir.

4 Q. The battles you were having on New Year's Day, you fired  
5 into Cambodia with a --

6 A. We fired in there, protected even more the villagers of An  
7 Phu. They didn't attack us, we attacked them. We had the  
8 first time we were able to do that inside their safe havens.

9 Q. Is that what Tenorio is saying and what you're saying in  
10 that newspaper article, that it's quiet and peaceful?

11 A. What he's saying there, I'm sure, is exactly what he was  
12 saying. I trusted the Vietnamese reporters. And in his mind,  
13 the same as in mine, if we're attacking the enemy and keeping  
14 them from causing fear within our villagers, then we're really  
15 doing our job. Now, the people kind of think about things in  
16 different ways. Sergeant Tenorio was an absolutely  
17 outstanding medic, and he thought in the terms that he did.  
18 Sergeant Tenorio didn't go out and fire mortars or go out in  
19 the field or night patrols, he wasn't out there making the  
20 area as secure as it was, but he was inside the area taking  
21 care of the people, like we should.

22 Q. You didn't take medics on your patrols into Cambodia?

23 A. We never took medics on night ambush patrols, no. We had  
24 so few people, sir. We were authorized 24 people, because of  
25 the many missions we had. We only had eight usually. And

## DANIEL MARVIN - CROSS-EXAMINATION

1 when you have to keep two in camp, and when you're supposed  
2 to, we did violate this every once in awhile, when you're  
3 supposed to always have two Americans on any combat operation.  
4 You can't do a heck of a lot, especially if you've got two  
5 FOBs with two men each on them, a camp that is required to  
6 have two left, that leaves two Americans to do the job that's  
7 supposed to be done by another 18.

8 Q. When you were offered this opportunity to be the A-424  
9 commander --

10 A. Yes, sir.

11 Q. -- by Colonel Tuttle, you made it a condition, you would  
12 accept it on one condition, didn't you say?

13 A. That I'd be able to have the people I wanted.

14 Q. Yes.

15 A. Yes, sir.

16 Q. But yet you were at least half strength, less than half  
17 strength?

18 A. That's right. Obviously he didn't send me enough, did he?  
19 I'm not asking a question, I'm sorry. To the people. He  
20 didn't send me enough people.

21 Q. Did you request --

22 A. Because I couldn't go out and recruit people; I was  
23 running the camp.

24 Q. Did you request any additional people?

25 A. We were authorized at all times, without ever having to

## DANIEL MARVIN - CROSS-EXAMINATION

1 request them, 24 people. Three officers and 21 enlisted men.

2 In an A Team situation, you don't request people, you get them  
3 based on your authorized strength, period.

4 Q. But you made it a condition of your performing this  
5 operation, that --

6 A. I made it a condition that they sent me a man I didn't  
7 want, he went back the next day. I got a sergeant first class  
8 in one day, just to give you an idea, to let you know. And he  
9 had all kinds of strength in him and everything else, acted  
10 like a Green Beret that had been around for a lot of years.  
11 And I put him in an assault boat and we went up to Phu Hiep,  
12 the same area that Bac-si was saying that he got scared in  
13 every time he went up there, and this -- the VC fired two  
14 rounds over us, and he laid down on the bottom of the boat and  
15 urinated all over himself. He was gone the next day. That's  
16 the way I ran a camp, sir.

17 Q. The condition was that you could hand pick your people?

18 A. That's correct.

19 Q. Did you hand pick him?

20 A. I hand pick them after I get them, sir. I'm not out there  
21 recruiting. I can't go outside of my camp area to do things  
22 like that.

23 Q. You can request Sergeant Jones or Sergeant Smith?

24 A. No, I can't. No, sir.

25 Q. But --

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1 A. I didn't know who was in the pipeline. Would you? Even  
2 the group commander didn't know who was in the pipeline.

3 Q. Let me ask the questions.

4 A. Yes, sir. Excuse me, sir.

5 Q. You were understrength over 50 percent?

6 A. Yes, sir.

7 Q. And you had a condition of your taking this command, that  
8 you be able to hand pick the people that you wanted in that  
9 camp. Is that correct?

10 A. I had the ability to maintain only those people I wanted.  
11 Period. In essence, that's one of the reasons why I'm so  
12 proud of these men. They did the job, each one of them, of at  
13 least two men.

14 Q. On page 12 --

15 A. Yes, sir.

16 Q. -- about three paragraphs up from that italicized  
17 paragraph.

18 A. Starting with I want, sir?

19 Q. Do you -- no, start with where you were asked the  
20 question, 'Do you still want An Phu,' and your answer to that.

21 A. Yes, sir. "I told him yes, but with one condition. The  
22 serious tone of his voice told me he didn't like demands  
23 coming from junior officers. 'What condition, Captain?'

24 "I want to hand pick my team, no questions asked.'

25 'You've got it.' I could keep any or all of my team already



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1 in An Phu. He would replace any I sent out as soon as  
2 possible. 'Fair enough?' he asked."

3 And I agreed to it. And I shook his hand and I took  
4 command of that independent operation.

5 Q. But you didn't get the people you wanted, did you?

6 A. I wish I would have, sir. No, I did not. I never was at  
7 full strength. I never was -- only at half strength a few  
8 days.

9 Q. Whenever you said you were talking with Walter Mackem  
10 about taking this assignment to assassinate Prince Sihanouk --

11 A. Wasn't an assignment, sir.

12 Q. Taking this opportunity that you were given?

13 A. Yes, sir.

14 Q. You said that you would take it on -- you would do it on  
15 one condition, didn't you?

16 A. That's correct, sir.

17 Q. And that condition wasn't met, and you just said you  
18 aborted it?

19 A. That's correct.

20 Q. You didn't abort your independent operation, did you?

21 A. I couldn't betray the Hoa Hoas, sir. We all agreed we'd  
22 do the best we could with what we had. You can ask my men  
23 what they felt like when they were there on the ground.

24 Q. Could you betray your Special Forces?

25 A. I never did, sir.

## DANIEL MARVIN - CROSS-EXAMINATION

1 Q. Whenever you refused the orders that you said that were  
2 given to you?

3 A. Those were illegal orders, sir. I've never refused a  
4 legal order. Never.

5 Q. And will you explain again why this order that you said  
6 that Colonel Tuttle sent you to transfer to B-42 or to report  
7 to them, was illegal?

8 A. Yes, sir. When Colonel Tuttle briefed me on whether or  
9 not I would accept the independent operation at An Phu, and he  
10 told me that when I left that room it was -- it would be as if  
11 we never met. That was just one of the ways of saying you're  
12 on your own. It was an independent operation. There is no  
13 command and control of an independent operation until that  
14 operation is terminated. Period.

15 Q. Who terminates it?

16 A. In that case, it was terminated by the conversion of the  
17 camp, sir.

18 Q. Who, is what I'm talking about. Who terminates it?

19 A. Major Phoi and I provided a successful conversion of the  
20 camp, so I guess we terminated it on our own.

21 Q. You were so independent you didn't have to obey anything  
22 that anybody said over you, and then you could terminate it  
23 when you wanted to.

24 A. That's correct, sir, and they actually disbanded the unit  
25 for a time. It no longer existed. In fact, according to

## DANIEL MARVIN - CROSS-EXAMINATION

1     them, it wasn't existing when we were there.

2     Q.   Look at, if you will, please, the general paragraph there,

3     A, of this MOPSUM that you have -- I believe is a -- the

4     exhibit that -- Yes.

5     A.   Did you want me to read that, sir?

6     Q.   Yes.

7     A.   This is paragraph one underlined general, subparagraph A,

8     this detachment is in phase four of counterinsurgency

9     operations with coequal missions of subsector adviser for An

10    Phu subsector, an adviser to the CIDG program and border

11    surveillance at camp An Phu.

12    Q.   What is the subsection -- subsector counterinsurgency

13    you're talking about?

14    A.   The subsector has nothing to do with counter -- that's the  
15    district chief.

16    Q.   What does that refer to?

17    A.   Two RF companies he commands.

18    Q.   And it states what your mission is, doesn't it?

19    A.   This is the unclassified mission, sir, has nothing to do  
20    with the top secret independent mission. There were no  
21    reports ever given on that. Period.

22    Q.   You were given a top secret independent operation mission,  
23    and no men to handle it. And in addition to that, you had to  
24    perform all of the activities that you stated here in the  
25    co-operation that you were doing?

## DANIEL MARVIN - CROSS-EXAMINATION

1 A. Yes, sir. And we did our best.

2 Q. On one -- this one operation I believe you -- on your  
3 critique you said you didn't have enough men to even send out  
4 on the operation at Khanh Bin?

5 A. Yes, sir, we had to go against -- that was my decision to  
6 go against the rule, that two Special Forces always go  
7 together. When Sergeant Taylor volunteered to go around with  
8 a platoon, I think it was, with Tony Trung, he went by  
9 himself. One American. That was illegal as all get out for  
10 the regular Special Forces operations. This was an  
11 independent operation. I called the shots, period.

12 Q. Who was calling the shots on the hat that you were wearing  
13 as the commander of the base there?

14 A. The regular roles would be the Colonel Brewer that --  
15 commander of B-42, and we followed all his instructions with  
16 unclassified operations. We just could never tell him about  
17 the other, and that upset him. In fact, he said he was going  
18 to destroy me when they -- when we disbanded An Phu. And, you  
19 know, you can read in the book what I told him and what  
20 actually happened, and he repeated it all to my wife.

21 Q. If you had not been -- could you have been transferred  
22 from that command or from that -- yeah, that command position  
23 that you had at An Phu, under the hat that you were wearing  
24 there as the commander, and transferred to another unit?

25 A. Under that hat, yes, sir, but General Heintges personally

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1 went to General Westmoreland to get permission for him -- for  
2 him to ask the commanding officer of Fifth Special Forces  
3 group to keep me there until my independent mission was  
4 completed. That's why -- the normal rule is six months.  
5 That's it.

6 Q. How did General Heintges know that this is what you were  
7 doing?

8 A. General Heintges is a general completely familiar with all  
9 kinds of unconventional operations. He commanded the  
10 operation in Laos where they went in there in civilian clothes  
11 and worked. He visited my camp three times. He tried to get  
12 General Westmoreland to maintain Special Forces in Vietnam,  
13 rather than pull them out, when we were the best forces they  
14 had, doing the best job of anybody else. General Heintges  
15 knew me well, I knew him well, he knew my best friend well.  
16 And he was a friend of Special Forces. In fact, there's a  
17 picture of him in the book.

18 Q. Was there ever any attempt to transfer you to another  
19 camp?

20 A. That's what I was afraid of, sir, that's why I talked to  
21 General Heintges. See, the people that were trying to  
22 transfer me, knew nothing of my covert operation.

23 Q. Mr. Marvin, you know that all of that is just untrue,  
24 don't you? That none of this -- this is in your -- only in  
25 your imagination, and that you have made this up to write a

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1 book and to sell a book.

2 MR. BACHRACH: Objection, Your Honor. I don't even  
3 know what he's asking about. He says everything is untrue.

4 A. So you're saying --

5 THE COURT: Wait a minute.

6 A. Excuse me.

7 THE COURT: You're paying your lawyer, you might as  
8 well follow his advice, all right? I'll overrule the  
9 objection. Go ahead.

10 A. Would you ask the question again, please?

11 BY MR. DEAVER:

12 Q. Primarily I asked you if you didn't -- you knew that  
13 this -- what you had written in this book, except for a few  
14 items, was totally untrue, and that the reason you wrote this  
15 book was to try to make a book sell, and you put items in  
16 there that were just so shocking, to -- that somebody  
17 somewhere along the way would believe it, didn't you?

18 A. No, sir. It says nonfiction; that's exactly what it is.  
19 I knew it would cost me and my publisher, and I thank God for  
20 sending a publisher my way that is willing to go almost  
21 bankrupt to publish the truth. This is the truth, the whole  
22 truth and nothing but the truth, and I believe that you  
23 perhaps know that.

24 MR. DEAVER: I don't think he's opened the door for  
25 me to give an opinion, Your Honor.

## DANIEL MARVIN - CROSS-EXAMINATION

1 THE COURT: Okay.

2 MR. DEAVER: And I won't, but I would like to.

3 BY MR. DEAVER:

4 Q. It wasn't true that whenever Martha Raye came in that the  
5 helicopter was shot, was it?

6 A. Not every time; she only visited once, sir.

7 Q. At the time that she came in that one time, that  
8 helicopter was not shot. There was nothing unusual at all  
9 about her landing, was there?

10 A. It's in the book, what happened, sir, and it's the truth.  
11 Period.

12 Q. I'm asking you.

13 A. It did happen, yes, sir.

14 Q. I know --

15 A. It's in the book.

16 Q. I know what's in the book.

17 A. Right. Everything in there is true, sir.

18 Q. You heard --

19 A. Except Lieutenant Martha Raye U.S. Army Nurse Corps, and I  
20 don't have to apologize to her for that, or her descendents,  
21 either.

22 Q. She is deceased.

23 A. I understand that. I kept pretty close contact with her.

24 Q. And you thought that -- how much contact -- you only had  
25 about 20 minutes there at that An Phu, didn't you?

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1 A. I'm not talking about An Phu at all, sir. And it's  
2 nobody's concern what happened since then between me and Martha  
3 Raye, that I know of, except the forward. And all these  
4 gentlemen sitting right there looking at me, were there in  
5 1988 on the 8th day of July, and there's some beautiful  
6 pictures showing their smiling faces next to old Dangerous  
7 Dan, and with Martha Raye, too, where we thanked her, we,  
8 thanked her for writing that forward.

9 Q. Had they been furnished a forward that she had written?

10 A. Yes, sir. In fact, I think John Strait commented on it on  
11 one of his tapes. And I think Bac-si did, too.

12 Q. Martha Raye just didn't even recognize you or know you at  
13 that convention, did she? Yes or no.

14 A. Yes, she did. You kind of asked two questions at the same  
15 time. I could say yes and no. Martha Raye recognized me,  
16 yes, sir. It's hard to not recognize old Dangerous Dan, you  
17 know?

18 Q. Yes, I can understand that.

19 A. Okay.

20 Q. Whenever she landed at An Phu, Sirois was not even at the  
21 camp, was he?

22 A. I think we have recognized that that was an error in the  
23 book, and that was Tenorio that was there. And that will be  
24 in the correction in the book when Mr. Millegan republishes  
25 it.



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1 Q. That was Mr. Kuchen?

2 A. Or Mr. Kuchen. Whoever it was, we'll go through the  
3 records and get it straight. We didn't mean to give credit to  
4 Sirois where it wasn't due, and deny Kuchen the credit where  
5 it was due, and I apologize to Sergeant Kuchen.

6 Q. And he said that he wasn't -- that he saw her there, and  
7 that she didn't even come to the dispensary, didn't he?

8 A. Yes, he did say that, but that doesn't mean it's true.

9 Q. Are all of these men liars?

10 A. These men are the finest men that ever served in an A camp  
11 in Vietnam. And anything that is a problem with them right  
12 now, is up to the people to decide, be the judge. I'm not  
13 going to judge them myself. I'd like that this never  
14 happened.

15 Q. That forward that you say that Martha Raye wrote, was --  
16 Well, you requested her to write it, did you not, after that  
17 meeting in Fayetteville?

18 A. No, sir. You look at the date on it, sir. You've got a  
19 copy of her original manuscript of her original printout from  
20 the computer, and it gives the exact date on it there. And it  
21 was part of the last manuscript that I sent to the men before  
22 the convention.

23 Q. But --

24 A. I didn't present any manuscripts at the convention.

25 Q. You didn't present any manuscripts to any of these men?

## DANIEL MARVIN - CROSS-EXAMINATION

- 1 A. At the convention, sir.
- 2 Q. During the convention.
- 3 A. Any time at the convention.
- 4 Q. Well, the date on the printout that you said that she had  
5 signed, was a copy, was it not, that you gave us?
- 6 A. I presented -- I didn't give you anything. I presented to  
7 my attorney, the original.
- 8 Q. And it was -- the date was handwritten on the typed  
9 portion, wasn't it?
- 10 A. That's the way she did it. Colonel Maggie was not a fussy  
11 type, you know, she was for the troops. She didn't write it  
12 out, because she wanted me to be able to read it, so she put  
13 it on a computer and printed it out, then she signed it  
14 Colonel Maggie.
- 15 Q. She signed it Martha Raye, also known as Colonel Maggie.
- 16 A. A/k/a. A/k/a Colonel Maggie, right.
- 17 Q. And she didn't --
- 18 A. So you have seen it. Yes, sir.
- 19 Q. A copy, I believe I said, that I was asking about.  
20 You thought that Colonel Tuttle was dead, didn't you?
- 21 A. No, sir. I -- you guys came up with that; I never heard  
22 that.
- 23 Q. It was an e-mail that you had sent, was it not?
- 24 A. I've never seen it, sir.
- 25 Q. You were shown to it in your deposition in Worcester,

## DANIEL MARVIN - CROSS-EXAMINATION

1 were you not?

2 A. An e-mail that I sent?

3 Q. Excuse me, it's not an e-mail, it was a letter. Let me  
4 show you what is marked as Plaintiffs' Exhibit No. 9. And if  
5 you will, please, it's in the book. Do you recognize this  
6 defense exhibit -- plaintiffs' exhibit?

7 A. Yes, sir.

8 Q. And what is that?

9 A. It's a letter I wrote to Wayne Lawley, the president of  
10 the Special Forces Association, and Jimmy Dean, the secretary  
11 of the Special Forces Association, in response to the threats  
12 that they made to my publisher, and maybe even my screenplay  
13 writer. I'd have to read it all.

14 Q. If you'd look at the second page, please?

15 A. Yes, sir.

16 Q. There's some -- there's a portion there that is -- if  
17 you'll look down there that's highlighted in yellow?

18 A. Oh, Colonel Tuttle --

19 Q. Would you read that paragraph, please?

20 A. The whole paragraph?

21 Q. Yes.

22 A. "You two write as if Special Forces weren't special at  
23 all, never asked to do the impossible, never asked to go on  
24 secret or top secret covert operations, some of which were  
25 true suicide missions. Colonel Tuttle, now deceased, totally

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1 understood his role as an intermediary between the CIA and  
2 whoever accepted the mission at An Phu. He explained --"

3 Q. That's far enough, thank you.

4 A. Okay. I thank you for jerking my memory back. There's an  
5 organization with the -- that works for, I believe, Special  
6 Forces Association, called the SFA Underground. And they've  
7 called me and told me that Captain David Vanic is dead,  
8 they've called and told --

9 Q. Are you responding to a question now --

10 THE COURT: I don't think so.

11 A. I'm sorry.

12 THE COURT: Ask a question so he can respond to it.

13 BY MR. DEAVER:

14 Q. Colonel Brewer, that you referred to in the book --

15 A. Yes, sir.

16 Q. -- also is deceased, isn't he?

17 A. I think he is, yes, sir.

18 Q. Did you ever send anything to -- or communicate with  
19 Colonel Tuttle about this book you were writing, to try and  
20 get his input on it?

21 A. No, sir, I couldn't in even find him.

22 Q. And you heard his testimony that none of that took place.

23 A. I expected him to say that, sir. I expected him to say  
24 that, because I -- unless I'm proven wrong, he signed a  
25 secrecy oath with the CIA, and there is no way he could ever

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1 even speak of anything of our meeting. Just -- it wouldn't be  
2 allowed by law to do it, and I understand that. And that's  
3 why I always refused to sign a secrecy oath.

4 Q. You didn't sign a secrecy oath --

5 A. No, sir.

6 Q. -- and got a top secret clearance?

7 A. You know the kind of -- the kind of secrecy oath that I'm  
8 talking about. And that's where you agree not to release any  
9 information to anybody about any of your operations with,  
10 association with or activity with the Central Intelligence  
11 Agency, period.

12 Q. And you bypassed that?

13 A. Yes, sir.

14 Q. And still got appointed as an independent operator?

15 A. That's correct, sir, I was good. They needed me.

16 Q. And they would have to take you under your conditions,  
17 your terms, right?

18 A. That's correct, sir.

19 Q. That's why as quartermaster officer you were that  
20 essential to the United States Army program in Korea and in --  
21 excuse me -- in Vietnam, and they would -- in order to get you  
22 to do a mission for them, they would do anything in the world  
23 to allow you to take it, or to encourage you to take it?

24 A. Well, sir, facts are facts. You know, people, especially  
25 you and your other attorneys and the group of plaintiffs, keep

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1 badgering the term quartermaster. I was quartermaster and  
2 proud of it. You notice that I didn't change my -- I was  
3 detached to Special Forces. I could have worn crossed arrows  
4 in Vietnam, or crossed rifles. I wore quartermaster because I  
5 was quartermaster. And I was good at quartermaster in my rank  
6 that ever walked the earth. Because I wanted to be good and I  
7 tried to be good and my records will prove it.

8 Q. You were a quartermaster because you were commissioned as  
9 a quartermaster officer, is that right?

10 A. Only because I couldn't get into infantry or engineers,  
11 any of the combat arms, because of my education. Period.

12 Q. Couldn't you take that commission only on the condition  
13 that it be in infantry or armor?

14 A. No, sir.

15 Q. But you took it anyway?

16 A. I was proud to take it, sir. I served my country well as  
17 a quartermaster officer, in a lot of nonquartermaster  
18 positions.

19 Q. The reason you weren't Branch Special Forces, in this  
20 report that you wrote, is because there was no Branch Special  
21 Forces, was there?

22 A. That's correct.

23 Q. So you didn't keep that quartermaster designation that --  
24 where you had to sign everything?

25 A. Since I retired, there is a Special Forces Branch.

## DANIEL MARVIN - CROSS-EXAMINATION

1 Q. Yes, sir?

2 A. And when I was on standby for alert to go to Iraq or Iran  
3 on possible unconventional covert operations, I was with a --  
4 enlisted with the special operations people.

5 Q. And you were going to Iraq to assassinate Saddam Hussein,  
6 weren't you?

7 MR. BACHRACH: Objection, Your Honor.

8 THE COURT: He open opened the door. You can answer  
9 that.

10 A. I volunteered to go to Iraq to set up a mission to  
11 assassinate Saddam Hussein, because I didn't want our country  
12 to invade Iraq.

13 Q. And when was this?

14 A. I don't know, sir, I didn't come prepared to answer that.

15 Q. Well, you --

16 A. It was sometime when he was still in power and still alive  
17 and we hadn't invaded yet.

18 Q. You could do it with whenever you filled out a report and  
19 when you -- everything else that you've done, and the names  
20 and even down to the hour almost, but you can't remember what  
21 even year this was?

22 A. Sir, I hope that you and the jury can understand that I  
23 didn't come here prepared to even discuss anything about  
24 Saddam Hussein.

25 Q. You were just talking about Saddam Hussein, weren't you,

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1 Mr. Marvin? Weren't you talking about a --

2 A. I never mentioned the word Saddam Hussein until you  
3 mentioned it.

4 Q. You were talking about a covert or counterinsurgency or  
5 covert, I believe it was, operation to -- to go to Iraq.

6 A. There's a lot of covert operations going on right now in  
7 Iraq, and I've got friends in them.

8 Q. Are you in any of those?

9 A. No, sir. I'm right here.

10 Q. There was only one then that you volunteered to do, wasn't  
11 there?

12 A. Right. And it was rejected. They said they don't do that  
13 kind of thing anymore.

14 Q. But yet they promoted you to bird colonel when you  
15 volunteered, is that right?

16 A. I said to them that if I were to be recalled to perform  
17 any covert mission, that I would only be recalled if I were  
18 recalled as a full colonel. Period. To recognize my past  
19 service and what I'd be doing.

20 Q. And they --

21 A. And they called me from Carlisle barracks, Pennsylvania.

22 Q. Who called you?

23 A. People in the I.D. card section, and said to come and get  
24 a new I.D. card with a full colonel rank on it. I went there  
25 with my wife. Picked up the new I.D. card with a full colonel



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1 rank on it. When the mission was finally -- when my whole  
2 status was changed, then I went back down, they called me and  
3 I got a new I.D. card again, with the lieutenant colonel's  
4 rank on it, which I believe I had explained to you.

5 Q. You were -- how old were you at the time that you got that  
6 promotion to colonel?

7 A. Oh, gee whiz -- it had to be in my sixties, sir. Couldn't  
8 be after 70, because you can't do anything like that after  
9 you're 70. They figure you're too old.

10 Q. You changed your letterhead that you were sending out to  
11 people on your correspondence to colonel, to full colonel.

12 A. That is correct, sir, I was proud of that. I'm proud of  
13 my military service. Even when I was a sergeant first class,  
14 I wanted to be called sergeant, not mister.

15 Q. But you haven't been in the Army for over 30 years now,  
16 have you?

17 A. I'm retired military lieutenant colonel. Yes, sir.

18 Q. That was your retired -- your rank at retirement?

19 A. And it still is, yes, sir.

20 Q. And you haven't been -- had anything to do with the  
21 military in over 30 years, have you?

22 A. I have had a lot of correspondence with the military on  
23 matters such as this.

24 Q. On matters such as what?

25 A. What we're here for.

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1 Q. For coming to court?

2 A. On matters to do with correcting things that I think are  
3 erroneous in the military.

4 Q. And just tell us a few of them.

5 A. I have -- I don't want to get into those.

6 MR. BACHRACH: Objection, Your Honor.

7 THE COURT: I'll sustain that.

8 BY MR. DEAVER:

9 Q. What are some of the things that you have done with the  
10 military since your retirement?

11 MR. BACHRACH: Objection, Your Honor. He's trying to  
12 get the same thing; it's irrelevant.

13 THE COURT: I'll sustain that.

14 Q. Do you have your colonel I.D. card now?

15 A. Yes, sir. I carry my I.D. card at all times.

16 Q. And it -- Could I see it, the colonel?

17 A. No, lieutenant colonel.

18 Q. Lieutenant colonel. What about the colonel card?

19 A. As I told you before, sir, I have to turn that in when I  
20 get a new one.

21 Q. Did you keep a copy of it?

22 A. No, sir. It was of no use.

23 Q. Did you keep -- I believe you said you burned those  
24 three-by-five cards, too, that were so --

25 A. Yes, sir.

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1 Q. -- essential to what you were doing?

2 A. They were essential only until I took the information off  
3 of them. Then they were no longer essential.

4 Q. You were told that if you didn't stop using that title of  
5 colonel on your letterhead, that you were going to be  
6 prosecuted for impersonating a superior officer, weren't you?

7 A. No, sir.

8 Q. You were not retired Special Forces either, were you?

9 A. I was a fully qualified Green Beret retired, yes, sir.

10 Q. You were retired quartermaster, were you not?

11 A. Who was at one time detached to Special Forces, yes, sir.

12 Q. That's not what it says on your -- on all of your  
13 letterhead now, it's United States --

14 A. That's correct, sir, that's all civilian letterheads that  
15 I can put any words in there that I care to, and I happen to  
16 be very proud of the fact that I've been in Special Forces,  
17 and I'm a retired lieutenant colonel, and that's what I put on  
18 there.

19 Q. Well, until just within the last several years you've  
20 been -- you put lieutenant colonel, U.S.A., retired, didn't  
21 you?

22 A. I have used all different ways. A.U.S. retired, Army of  
23 the United States, U.S. Army retired, U.S.A.R. retired,  
24 they're all correct.

25 Q. Did you ever use U.S.A.Q.M.C. retired?

## DANIEL MARVIN - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. On your letterhead or --

3 A. Especially when I was working with the quartermaster  
4 museum.

5 Q. And you put that on the -- your branch on your --

6 A. Yes, sir.

7 Q. -- after your name?

8 A. Yes, sir.

9 Q. When you volunteered to go and assassinate Hussein, was  
10 that the first time you had volunteered to assassinate  
11 anybody?

12 MR. BACHRACH: Objection, Your Honor.

13 THE COURT: I'll let him answer that one question.

14 BY MR. DEAVER:

15 Q. Was it?

16 A. I'm going to have to ask the Court to bear with me on a  
17 yes or no answer. Anybody within Special Forces that was  
18 trained and used as an assassin, could never tell anybody, if  
19 he had volunteered, which you would have to, to take an  
20 assassination mission, because it is -- there's no statute of  
21 limitations on murder, and all assassination missions are  
22 murder, because anything you're asked by the Government to do,  
23 there is no paperwork, no backup, no nothing, you're on your  
24 own, period.

25 Q. So what you're saying is everything you're testifying

## DANIEL MARVIN - CROSS-EXAMINATION

1 about now is going to have to be taken on faith that you're  
2 telling the truth?

3 MR. BACHRACH: Objection.

4 Q. Is that right?

5 THE COURT: Overrule that one. Go ahead.

6 A. Everything I said here is true, and anybody who knows me  
7 believes it. It's hard to read that book without feeling in  
8 your heart that it's the truth.

9 Q. You're talking about me?

10 A. Anybody, sir. I know whose side you're on, sir.

11 Q. Well, these men read the book, didn't they?

12 A. Yes, sir, and their initial reports were excellent.

13 Q. And you think that it's hard for them not to believe it?

14 A. Initially they told me they believed it and loved it.

15 Q. Now, you were talking about they. Did George Kuchen tell  
16 you that?

17 A. I have told you I had no contact with George Kuchen.

18 Q. Well, he's anybody that read it though; you've heard him  
19 testify.

20 A. Yes. Um-hum. I had no contact with him.

21 Q. But he didn't --

22 A. He couldn't tell me that, if I had no contact with him.

23 Q. He didn't have to believe it though, did he?

24 A. No, nobody has to believe it. I believe it because I  
25 wrote it and I know it's true.

## DANIEL MARVIN - CROSS-EXAMINATION

1 MR. DEEVER: Could I get some water, please, Your  
2 Honor?

3 THE COURT: How much longer are you thinking about  
4 going?

5 MR. DEEVER: Your Honor, I feel like that we're just  
6 going to take at least another hour and a half. And the  
7 reason being that his conversation --

8 THE COURT: I'll tell you what I'm going to do, I'm  
9 going to quit, and you're going to whittle it down.

10 MR. DEEVER: Excuse me?

11 THE COURT: We're going to quit right now and you're  
12 going to whittle it down; how about that? Make that trade?

13 MR. DEEVER: Yes, Your Honor.

14 THE COURT: Okay. All right. Ladies and gentlemen  
15 of the jury, we'll quit for tonight; we'll see you, how  
16 about -- 9:00 o'clock in morning too early? See y'all at  
17 9:00 o'clock.

18 (Jury excused.)

19 (Discussion held off the record.)

20 THE COURT: Mr. Ogiba, anybody have any complaint  
21 about the jury instructions specifically?

22 MR. OGIBA: No, we went through it and they're fine  
23 with us.

24 THE COURT: How about y'all?

25 MR. DEEVER: No, Your Honor.

## DANIEL MARVIN - CROSS-EXAMINATION

1 THE COURT: I think we've made a couple of technical  
2 changes, really doesn't -- I don't think it -- we'll take out  
3 special damages for the plaintiffs, I'm sure, so we'll give  
4 you another shot tomorrow, and if there's any changes in it  
5 that we make, we'll highlight them.

6 MR. OGIBA: The only change we would suggest making  
7 is to the criminal allegations, I think there are a couple of  
8 plaintiffs who everybody can agree did not -- were not accused  
9 of any crimes.

10 MR. COLLINS: Menkins.

11 THE COURT: Menkins. All right. See y'all at  
12 9:00 o'clock.

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14 (Court adjourned at 7:00 p.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court  
Reporter for the United States District Court for the District  
of South Carolina, hereby certify that the foregoing is a true  
and correct transcript of the stenographically recorded above  
proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR